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General Contents

Land Laws of Bangladesh

Vol. I

Land Laws of Bangladesh

Vol.II

Land Laws of Bangladesh

VOL-III

Land Laws of Bangladesh

VOL—IV

The Acquisition of Immovable Property Rules,1982
The Requisition of Immovable Property Rules,1982
The Agricultural Labour (Minimum Wages)Ordinance,1984
The Land Acquisition Act,1894
The Acquisition of Waste Land Act,1950
The Hats & Bazars (Establishment & Acquisition)
Ordinance,1959

Land Laws of Bangladesh

Vol. I

1. Bengal Regulation, 1793
2. Bengal Alluvion and Diluvion Regulation, 1825
3. Bengal Patni Taluk Regulation, 1819
4. Bengal Land Revenue Sales Act, 1859
5. Leading Cases

Table of Contents

CHAPTER –I

Bengal Regulation I of 1793

(*Topics marked with asterisks deserve special attention)

CHAPTER – II

Bengal Regulation II of 1793

CHAPTER –III

Decennial Settlement Regulation VIII of 1793

Page

CHAPTER —IV

Non-Badshahi Lakhiraj Regulation XIX of 1793

CHAPTER —V

Badshahi Lakhiraj Regulation XXXVII of 1793

CHAPTER –VI

Bengal Alluvion and Diluvion Regulation XI of 1825

Page

CHAPTER —VII

Bengal Patni Taluk Regulation VIII of 1819

CHAPTER —VIII

Bengal Land Revenue Sales Act XI of 1859

CHAPTER—IX

LEADING CASES

CHAPTER –I

PERMANENT SETTLEMENT REGULATION

BENGAL REGULATION I OF 1793.

Passed by the Governor General in Council on the 1st May, 1793.

1. The following articles of the Proclamation relative to the limitation of the public demand upon the lands, addressed by the Governor General in Council to the zamindars, independent talukdars and other actual proprietors of land paying revenue to Government, in the Provinces of Bengal, Bihar and Orissa, are hereby enacted into a Regulation, which is to have force and effect from the 22nd March, 1793, the date of the Proclamation.

PROCLAMATION

2. Decennial settlement declared conditionally permanent by original Regulations (Article I) :—In the original Regulations for the decennial settlement of the public revenues of Bengal, Bihar and Orissa, passed for those Provinces, respectively, on the 18th September, 1789, the 25th November, 1789 and the 10th February, 1790 it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the jama assessed upon their lands under those Regulations would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East India Company, and not otherwise.

3. Power to declare jama assessed upon lands under those Regulations, fixed for ever (Article II) :—The Marquis Cornwallis, Knight of the Most Noble Order of the Garter, Governor-General in Council, now notifies to all zamindars, independents talukdars and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Bihar and Orissa, that he has been empowered by the Honourable Court of Directors for the affairs of the East India

Company to declare the jama, which has been or may be assessed upon their lands, under the Regulations abovementioned, fixed for ever.

4. Jama assessed upon lands of proprietors with whom settlement concluded, fixed for ever (Article III) :–The Governor General in Council accordingly declares to the zamindars, independent talukdars and other actual proprietors of land with or on behalf of whom a settlement has been concluded under the Regulations above-mentioned, that at the expiration of the term of the settlement no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever.

5. Jama hereafter agreed to by proprietors whose lands are held khas, or let in farm, fixed for ever (Article IV) :- The lands of some zamindars, independent talukdars and other actual proprietors of land having been held khas or let in farm, in consequence of their refusing to pay the assessment required of them under the Regulation above-mentioned, the Governor General in Council now notifies to the zamindars, independent talukdars and other actual proprietors of land whose lands are held khas, and that they shall be restored to the management of their lands, upon their agreeing to the payment of the assessment which has been or may be required of them in conformity to the Regulations above-mentioned, and that no alteration shall afterwards be made in that assessment, but that they and their heirs and lawful successors shall be permitted to hold their respective estates at such assessment for ever and he declares to the zamindars, independent talukdars and other actual proprietors of land, whose lands have been let in farm, that they shall not regain possession of their lands before the expiration of the period for which they have been farmed (unless the farmers shall voluntarily consent to make over to them the remaining term of their lease, and the Governor-General in Council shall approve of the transfer), but that at the expiration of that

period, upon their agreeing to the payment of the assessment which may be required of them, they shall be reinstated, and that no alteration shall afterwards be made in that assessment, but that they and their heirs and lawful successors, shall be allowed to hold their respective estates at such assessment for ever.

6. Jama of lands belonging to Government, but transferred to individuals, fixed for ever (Article V) :- In the event of the proprietory right in lands that are, or may become, the property of Government being transferred to individuals, such individuals, and their heirs and lawful successors, shall be permitted to hold the lands at the assessment at which they may be transferred, for ever.

7. Assessment in former times liable to variation at discretion of Government (Article VI) :— It is well known to the zamindars, independent talukdars and other actual proprietors of land, as well as to the inhabitants of Bengal, Bihar and Orissa, in general, that from the earliest times until the present period the public assessment upon the land has never been fixed, but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of the management of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the raiyats.

Motives of Court of Directors for abolishing usage and fixing assessment :—The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future case and happiness of the people authorized the foregoing declarations; and the zamindars, independent talukdars and other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the

assessment as irrevocable, and not liable to alteration by any person whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

Proprietors expected to improve estates :—The Governor General in Council trusts that proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs or successors, by the present or any future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

Conduct to be observed by proprietors towards dependent talukdars and raiyats :—To discharge the revenues at the stipulated periods without delay or evasion and to conduct themselves with good faith and moderation towards their independent talukdars and raiyats, are duties to all times indispensably required from the proprietors of land, and a strict observance of those duties is now more than ever incumbent upon them in return for the benefits which they will themselves derive from the orders now issued. The Governor-General in Council therefore expects that proprietors of land will not only act in this manner themselves the strictest adherence to the same principles in the persons whom they may appoint to collect the rents from them.

No claims for remissions or suspensions :—He further expects that, without deviating from this line of conduct, they will regularly discharge the revenue in all seasons. and he accordingly notifies to them, that, in future, no claims or applications for suspensions or remissions, on account of drought, inundation or other calamity of seasons, will be attended to, but that in the event of any zamindar, independent talukdar or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue which has been or

may be assessed upon their lands under the above-mentioned Regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place.

8. To prevent any misconstruction of the foregoing articles the Governor-General in Council thinks it necessary to make the following declarations to the zamindars, independent talukdars and other actual proprietors of land (Article VII) :—

(1) Regulations for protection of raiyats, etc. :—It being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil; and no zamindar, independent talukdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.

(2) Right of Government to all internal duties :—The Governor-General in Council having, on the 28th July, 1790, directed the sair collections to be abolished, a full compensation was granted to the proprietors of land for the loss of revenue sustained by them in consequence of this abolition; and he now declares that, if he should hereafter think it proper to re-establish the sair collections or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land will be admitted to any participation thereof, or be entitled to make any claims for remissions of assessment on that account.

(3) and to jama on alienated lands :—The Governor-General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue which have been or may be proved to be held under illegal or invalid titles. The assessment so imposed will belong to Government and no proprietor of land will be entitled to any part of it.

(4) Resumption of police allowances to proprietors :—The jama of those zamindars, independent talukdars and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of, any allowances which have been made to them in the adjustment of their jama, for keeping up thanas or police establishments, and also of the produce of any lands which they may have been permitted to appropriate for the same purpose, and the Governor-General in Council reserves to himself the option of resuming the whole or part of such allowances, or produce of such lands, according as he may think proper in consequence of his having exonerated the proprietors of land from the charge of keeping the peace and appointed officers on the part of Government to superintend the police of the country.

The Governor-General in Council however, declares that the allowances or produce of lands which may be resumed will be appropriated to no other purpose but that of defraying the expense of the police; and that instructions will be sent to the Collectors not to add such allowances, or the produce of such lands to jama of the proprietors of land, but to collect the amount from them separately.

(5) Estates of disqualified proprietors not liable to sale for arrears :—Nothing contained in this proclamation shall be construed to render the lands of the several descriptions of disqualified proprietors, specified in the first Article of the Regulations regarding disqualified landholders, passed on the 15th July, 1791, liable to sale for any arrears which have accrued or may accrue on the fixed jama that has been or may be assessed upon their lands under the above-mentioned Regulation for the decennial settlement : provided that such arrears have accrued or may accrue during the time that they have been or may be disposed of the management of their lands under the said Regulations of the 15th July, 1791.

It is to be understood, however, that whenever all or any of the descriptions of disqualified landholders, specified in the first Article of the last mentioned Regulations, shall be permitted to assume or retain the management of their lands, in consequence of the ground of their disqualification, no longer existing, or of the Governor-General in Council dispensing with, altering or abolishing those Regulations, the lands of such proprietors will be held responsible for the payment of the fixed jama that has been or may be assessed thereon, from the time that the management may devolve upon them, in the same manner as the lands or all actual proprietors of land who are declared qualified for the management of their estates, and also of all actual proprietors who are unqualified for such management, by natural or other disabilities but do not come within the descriptions of disqualified landholders specified in the first Article of the Regulations of the 15th July, 1791, are and will be held answerable, for any arrears that are or may become due from them, on the fixed jama which they, or any person on their behalf have engaged or may engage to pay, under the above-mentioned Regulations for the decennial settlement.

9. Proprietors may transfer lands without sanction of Government (Article VIII) :—That no doubt may be entertained whether proprietors of land are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council notifies to the zamindars, independent talukdars and other actual proprietors of land that they are privileged to transfer to whomsoever they may think proper, by sale, gift or otherwise, their proprietory rights in the whole or any portion of their respective estates, without applying to Government for its sanction to the transfer and that all such transfers will be held valid : Provided that they be conformable to the Muhammadan or the Hindu Laws (according as the religious persuations of the parties to each transaction may render the validity of it determinable by the former or the latter Code), and that they be not repugnant to any Regulations now in force, which have been passed by the British administrations, or to any Regulations that they may hereafter enact.

10. Rules for apportioning fixed jama on portions of estates in event of sale or transfer and on shares of estates (Article IX) :—From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements), of any landed property, for the assessment on which a distinct engagement has been or may be entered into between Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed jama assessed upon it (which, agreeable to the foregoing declarations, is to remain unalterable for ever, to whomsoever the property may be transferred), with the whole of its produce allowing for the charges of management.

But it is also essential that a notification should be made of the principles upon which the fixed assessment charged upon any such estate will be apportioned on the several divisions of it, in the event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots, or of a portion of it being transferred in one or in two or more lots, or of its being joint property and a division of it being made amongst the proprietors; otherwise, from the want of a declared rule for estimating the proportion of the fixed jama with which the several shares would be chargeable on such cases, the real value of each share would be uncertain, and consequently the benefits expected to result from fixing the public assessment upon the lands would be but partially obtained.

The Governor-General in Council has accordingly prescribed the following rules for apportioning the fixed assessment in the several cases above-mentioned; but as Government might sustain a considerable loss of revenue by disportionate allotments of the assessment were the apportioning of it, in any of the cases above specified, to be left to the proprietors, he requires that all such transfers or divisions as may be made by the private act of the parties

themselves be notified to the Collector of the revenue of the zila in which the lands may be situated or such other officer as Government may in future prescribe, in order that the fixed jama assessed upon the whole estate may be apportioned on the several shares in the manner hereafter directed, and that the names of the proprietors of each share and the jama charged thereon may be entered upon the public registers, and that separate engagements for the payment of the jama assessed upon each share may be executed by the proprietors, who will thence forward be considered as actual proprietors of land.

And the Governor-General in Council declares that, if the parties to such transfers or divisions shall omit to notify them to the Collector of the revenue of the zila or such other officer as may be hereafter prescribed, for the purpose before mentioned the whole of such estate will be held responsible to Government for the discharge of the fixed jama assessed upon it, in the same manner as if no such transfer or division had ever taken place.

The Governor-General in Council thinks it necessary further to notify, in elucidation of the declarations contained in this Article (which are conformable to the principles of the existing Regulations), that if any zamindar, independent talukdar or other actual proprietor of land shall dispose of a portion of his or her lands as a dependent taluk, the jama which may be stipulated to be paid by the dependent talukdar will not be entered upon the records of Government, nor will the transfer exempt such lands from being answerable, in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor, or his or her heirs or successors, falling in arrear from any cause whatever, or will it be allowed, in any case, to affect the rights or claims of Government, any more than if it had never taken place.

(1) In the event of the whole of the lands of a zamindar, independent talukdar or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded under the Regulations above-mentioned being

exposed to public sale by the order of the Governor-General in Council, for the discharge of arrears of assessment, or in consequence of the decision of a Court of Justice, in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands sold may bear to the whole of their actual produce.

This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor-General in Council may hereafter adopt, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold them at the jama at which they may be so purchased, for ever.

(2) When a portion of the lands of a zamindar, independent talukdar or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, under the Regulations before-mentioned, shall be exposed to public sale, by order of the Governor-General in Council, for the liquidation of arrears of assessment, or pursuant to the decision of a Court of Justice, the assessment upon such lands, if disposed of in one lot, shall be fixed at an amount which shall bear the same proportion to their actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those disposed of, may bear to the whole of their actual produce.

If the lands sold shall be disposed of in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its produce as the fixed assessment upon the whole of the lands of such proprietor including those sold, may bear to the whole of their actual produce.

The actual produce of the whole of the lands of such proprietor, whether the portion of them which may be sold be disposed of in one or in two more lots shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor-General in Council may hereafter enact, and the purchaser or

purchasers of such lands, and his or her or their heirs or successors, will be allowed to hold them at the jama at which they may be so purchased, for ever : and the remainder of the public jama, which will consequently be payable by the former proprietor of the whole estate, on account of the portion of it that may be left in his or her possession, will continue unalterable for ever.

(3) When a zamindar, independent talukdar or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, shall transfer the whole of his or her estate, in two or more distinct portions, to two or more persons, or a portion thereof to one person, or to two or more persons in joint property, by private sale, gift or otherwise, the assessment upon each distinct portion of such estate so transferred shall be fixed at an amount which shall bear the same proportion to its actual produce as the assessment upon the whole of the estate of the transferring proprietor, of which the whole or a portion may be so transferred, may bear to the whole of its actual produce.

This produce shall be ascertained in the mode that is or may be prescribed in the existing Regulations, or such other Regulations as Government may hereafter adopt, and the person or persons to whom such lands may be transferred, and his or her or their heirs and lawful successors shall hold them at the jama at which they may be so transferred, for ever : and where only a portion of such estate shall be transferred, the remainder of the public jama which will consequently be payable by the former proprietor of the whole estates on account of the lands that may remain in his or her possession shall be continued unalterable for ever.

(4) Whenever a division shall be made of lands, the settlement of which has been or may be concluded with or on behalf of the proprietor or proprietors and that are or may become the joint property of two or more persons, the assessment upon each share shall be fixed at an amount which shall bear the same proportion of its actual produce as the fixed jama assessed upon the whole of the estate divided may bear to the whole of its actual produce.

This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor-General in Council may hereafter adopt, and the sharers, and their heirs and lawful successors, shall hold their respective shares at the jama which may be so assessed upon them for ever.

11. Adjusting jama of lands held khas or let in farm (Article X) :—The following rules are prescribed respecting the adjustment of the assessment on the lands of the zaminders, independent talukdars and other actual proprietors of land, whose lands are or may be held khas or let in farm in the event of their being disposed of by public sale or transferred by any private act of the proprietor, or of their being joint property, and a division of them taking place amongst the proprietors.

(1) If the whole, or a portion of the lands of a zaminder, independent talukdar or other actual proprietor of land who may not have agreed to the payment of the assessment proposed to him or her under the Regulations above-mentioned, and whose lands are or may be held khas or let in farm, shall be exposed to public sale in one or in two or more lots (pursuant to the decree of a Court of Justice), such lands, if khas, shall be disposed of at whatever assessment the Governor-General in Council may deem equitable, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold the lands at the assessment at which they may be so purchased for ever.

If the lands, at the time of their being exposed to sale, shall be held in farm, and shall be put up in one or in two or more lots, they shall be disposed of under the following conditions :—

The purchaser or purchasers shall receive, during the unexpired part of the term of the lease of the farmer, whatever such proprietor shall have been entitled to receive, in virtue of his or her proprietory rights, on account of the land so purchased, and such purchaser or purchasers shall engage to pay, at the expiration of the lease of the farmer, such assessment on account of the lands as Government may deem equitable.

The sum to be received by the purchaser or purchasers during the unexpired part of the term of the lease of the farmer, and the jama to be paid by such purchaser or purchasers after the expiration of the lease, shall be specified at the time of the sale, and such purchaser or purchasers, and his or her or their heirs and lawful successors, shall be allowed to hold the lands at the assessment at which they may be so purchased, for ever.

(2) If a zamindar, independent talukdar or other actual proprietor of land, whose lands are or may be held khas or let in farm, shall transfer by private sale, gift or otherwise, the whole or a portion of his or her lands in one or two or more lots, the person or persons to whom the lands may be so transferred shall be entitled to receive from Government (if the lands are held khas) or from the farmer (if the lands are let in farm), the malikana to which the former proprietor was entitled on account of the land so transferred.

Persons to whom such lands may be so transferred will stand in the same predicament, as the zamindars, independent talukdars or other actual proprietors of land mentioned in the fourth Article, whose lands are held khas, or have been let in farm, in consequence of their refusing to pay the assessment required of them under the before-mentioned Regulations for the decennial settlement ; and the declarations contained in that Article are to be held applicable to them.

(3) In the event of a division being made of lands that are or may become the joint property of two or more persons, and which are or may be held khas or let in farm, the proprietors of the several shares will stand in the same predicament with regard to their respective shares, as the zamindars, independent talukdars and other actual proprietors of land specified in the fourth Article, whose lands have been let in farm or are held khas in consequence of their having refused to pay the assessment required of them under the before-

mentioned Regulations for the decennial settlement : and the declarations contained in that Article are to be considered applicable to them.

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2. History of Permanent Settlement Regulation :—On the 12th August, 1765, Shah Alam, the titular Emperor of Delhi made a perpetual grant to the East Indian Company of the Dewani (revenue administration) of Bengal, Behar and Orissa.

As a result of the grant of the Dewani, it was necessary for the Company's Servants to undertake the administration of land revenue. But they were placed in great difficulty and embarrassment. They came to this country solely in the pursuit of trade and were wholly ignorant of the conditions of land holding in Bengal. They were altogether lacking in any experience of revenue administration. Moreover there was no system of written rules and plain principles in the country, by which they could learn the revenue administration by careful application. Those upon whom they relied for information were prompted by self-interest.

At first they made no change in the existing system and the revenue administration was left in the hands of the Bengali functionaries. It was carried on in the name of the Subadar. But in 1769, the Company appointed Supervisors to superintend the collections by the native officers, but this policy proved ineffective. In 1772, the British Government undertook the direct administration of revenue and concluded a Quinquennial Settlement with those who offered the highest bid to secure a better control of the collections. After the expiry of the Quinquennial Settlement in 1777, annual settlements were made for several years. The Company's Government understood that such settlements were injurious to the land holders and their tenants as it discouraged all improvements in agriculture and consequently inimical to the general prosperity of the country.

Under these arrangements, many of the existing zamindars were ousted. The dispossessed zamindars complained to

the House of Commons and it attracted the notice of Home Authorities. Consequently in 1784, Pitt's India Act was passed which ordered an enquiry into the complaints of the disposessed zamindars and directed the Company to enquire into the conditions of land holders and for the establishment of permanent rules for the collection of revenue based on local laws and usages of the country. In pursuance of the provisions of the Act, the Court of Directors suggested that an experimental settlement of land should be made and if such a settlement proved successful, it would be made permanent.

To carry these directions into effect. Lord Cornwallis came as Governor-General in 1786 and started vigorous and prolonged enquiries as to the past and present conditions of land tenures and land revenue in Bengal. These enquiries resulted in the declaration of the decennial Settlement of 1790-91. The rules of this settlement were incorporated with modifications and amendments in Regulation VIII of 1793. On the proposal of Lord Cornwallis and on the approval of the Court of Directors the Decennial Settlement was made permanent by the proclamation of the 22nd March, 1793. The Article of the proclamation were enacted into Regulation 1 of 1793, which came into force from the 22nd March, 1793, the date of the proclamation.

3. The position of zamindars before Permanent Settlement :—The position and rights of the Bengal zamindars at the commencement of the British rule were anomalous and incapable of exact definition. Many of the zamindars were entrusted with rights and charged with duties, which belonged to Government. They had authority to collect from the raiyats a certain portion of the produce of the lands. They imposed taxes and levied tolls and they increased their income by fees and exactions. On the other hand they were bound to maintain peace and order and administer justice within their zamindaries. For the purpose they had to keep up Courts of Civil and Criminal Justice, to employ Kazis, Kanungos and Thanadars or a police force. As against the raiyats and other

inhabitants within their territories, many of the zamindars exercised almost real authority. As against the Government, they were administrators.

The zamindaries were granted to them from year to year. The property in the soil was never formally declared to be vested in them. They were not allowed to transfer such rights and could not raise money upon the credit of their tenure, without the previous sanction of Government. The public demand upon each estate was liable to annual or frequent variation at the discretion of Government. The revenue was fixed upon an estimate, by public officers, of the aggregate of rent payable by the raiyats or tenants for each bigha of land in cultivation. After deducting the expenses of cultivation, ten-elevenths were usually considered as the right of the public and the remainder was the share of the land-lord. Refusal to pay the sum required of him was followed by his removal from the management of his lands and the public dues were either let in farm or collected by an officer of Government. The hereditary land-holder had little inducement to improve his estate as the extension of productive cultivation meant a heavier assessment of revenue and the possession of the property was uncertain. The moneyed men had no encouragement to embark their capital in the purchase of improvement of land, whilst not only the profit but the security for the capital was so precarious. The same causes depreciated its value.

Under this system the state of the provinces was deplorable. Murder and rapine were common throughout the country. More than half of the lands were waste and uncultivated. Neither the raiyats nor the zamindars had any inducement to improve them as any increase in their value had only effect of increasing the Government assessment. It was considered by the company that it was better to convert the zamindars into land-owners and to fix a permanent annual Jama for a better system of Government and for the amelioration of the condition of their subjects. As a result the zamindars would get the benefit of all subsequent improvements.

Before the advent of the British rule there were two distinct classes of zamindars in Bengal differing in origin as well as in status. The first class of zamindars were territorial chiefs and were land-owners in the true sense of the term, while a more numerous class consisted of farmers and revenue-collectors who had usurped the status of land holders under false pretences.

The framers of the Permanent Settlement had to deal with a heterogeneous body of zamindars differing in historical origin and actual status. The Permanent Settlement made a uniform status for all zamindars.

***4. Position of zamindars after Permanent Settlement :—** A zamindari, since the Permanent Settlement, is an absolute right of proprietorship in the soil subject to the payment of a fixed amount of revenue to the Government. If this revenue falls into arrear, the estate may be put up to auction and sold to the highest bidder. The purchaser acquires the estate free of all incumbrances created since the time of Permanent Settlement and obtians a statutory title. A zamindari is heritable according to the law of succession by which the proprietor is governed. It is assignable in whole or in part. It may be mortgaged. The zamindar can grant leases either for a term or in perpetuity. He is entitled to rent for all lands lying within the limits of his zamindari and the right of mining, fishing and other incorporeal rights are included in his proprietorship (Field).

The zamindars acquired the following rights under the Permanent Settlement :—

(1) They were made the hereditory proprietors of the soil, subject to the payment of a fixed amount of revenue to the Government.

(2) They were protected from periodical enhancement of the assessment as the land-revenue was fixed in perpetuity.

(3) Their interest in their estates being heritable and transferable, they were free to alienate the whole or part of their estates by gift, sale or any other legal process provided such transfer be not repugnant to any existing law.

(4) They were entitled to the rent of all lands and to exploit the mines and fisheries within their estates.

(5) They were entitled to let out their lands to the subordinate holders on any term they chose, subject to some restrictions.

(6) They were entitled to those rights known as Jalkar (right of fishery), bankar (right of cutting wood in jungle or waste land), phulkar (right of gathering the fruits of garden and orchards) and ghasskar etc. and these rights came to be treated as incorporeal hereditaments and transferable separately from the zamindary as well as from the land.

***5. Duties of proprietors under the Permanent Settlement (Sec.7, Art.6) :—**(1) They are to discharge the revenues at the stipulated periods without delay or evasion. (2) They are to conduct themselves with good faith and moderation towards their dependent talukdars and raiyats. (3) They should exert themselves in the improvement of their estates.

***6. Rights reserved by Government under the Permanent Settlement. (Sec. 8, Art.7) :—**Government reserved to itself the right— (1) to enact regulations for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil; (2) to re-establish the sayar collections or any other internal duties and to appoint officers to collect them; (3) to impose assessment on all revenue-free lands held under illegal or invalid titles;. and (4) to resume police-allowances in land or money received by proprietors.

7. Sayar means remaining and was applied by the Mahomedan Government to the remaining source; of revenue besides the land-tax, such as customs, transit-duties, licences, fees, house-tax, market-tax etc. The imposition and collection of such internal duties had been, from time immemorial, the exclusive privilege of Government not exercisable by any subject without its express sanction. This sanction, however, had been generally allowed to the zamindars who had imposed numerous and vexatious internal duties for their own advantage. But the Governor-General in Council under section 8(2) of Regulation 1 of 1793, directed the sayar collections to be abolished.

***8. Ghatwali tenure :—**(Ghat means "a mountain-pass" and Ghatwal means a person in charge of a mountain-pass). Ghatwali Tenures are grants of land situated on the edge of the hilly country, and held on condition of guarding the ghats or passes. They were created by the Mahomedan Government in early times as a means of providing a police and military force to watch and guard the mountain-passes from the invasions of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government to persons of high ranks at a low rent or at no rent at all, upon condition that they should provide and maintain a sufficient military force to protect the inhabitants of the plains from those lawless incursions. The grantees on their part sub-divided the lands to other tenants, each of whom, besides paying generally a small rent, held their lands in consideration of these military services and provided, each according to the extent of his holding, a specified number of armed men to fulfil the requirements of the Government.

In a suit for resumption of Ghatwali tenure in Raja Lilanand Sing V. The Government of Bengal (6 M.I.A. 101) it has been held that the Ghatwali lands begin included in the settlement and covered by the jama assessed therein, are not liable to resumption by Government for assessment under the provisions relating to Thanas or police establishments under Sec. 8, Art. 7, Cl. 4 of the Permanent Settlement Regulation. This Section reserved the power of the Government to resume Thanadari lands and not Ghatwali lands which are included in the settlement and covered by the assessment. The Permanent Settlement Regulation refers to lands which the Government permitted the zamindars to hold free from revenue or at reduced revenue for the purpose of keeping up police establishments. It did not refer to lands which the zamindars had permitted other persons to hold free from rent or at a reduced rent. The Ghatwali lands fell within this latter class and they were held by a tenure created long before the

East India Company acquired any dominion over the country. The lands were appropriated to reward the services of Ghatwals, services which although they would include the performance of duties of police were quite as much, in their origin, of a military as of a civil character and would require the appointment of a very different class of persons from ordinary police officers. Sec.8, Art.7, Cl. 4 of the Permanent Settlement Regulation never contemplated the resumption of these lands which formed part of the zamindari and were included in and covered by the assessment of 1889-90.

*9. **Malikana**—(from malik "an owner", "a proprietor") means an allowance for proprietary right generally not less than five and not more than 10 per cent on the net collections of the estate. When a proprietor is removed from the management of his estate on account of his refusal to accept the term of settlement offered to him, he is allowed malikana and his estate is held khas. Estates held khas are sometimes let out in farm or ijara. Such estates are known as **khas mahals** or estates held by Government standing in the place of a proprietor.

The rules making the Decennial Settlement permanent directed that the proprietors who might finally refuse to enter into engagements for the amount of revenue required of them, should be allowed malikana in consideration of their proprietary rights at the rate of 10 per cent on the revenue, if the lands were let in farm. The amount of the malikana was payable by the farmer to the proprietor in addition to the amount payable to the Government as revenue in instalments according to the instalments of Government revenue. The Collectors were to realise the malikana in the same way as Government-revenue, and the Government guaranteed the amount of the proprietors. In the event of the land being held khas by Government, the malikana was payable by the collector at 10 per cent on the net collections. In Bengal proper, instances of payment of malikana by Government or any farmer are rare. Grants of malikana are largely found in Behar.

***10. Effect of Permanent Settlement, (a) on the state :—** (1) The state had a customary right as proprietor of taking a specific share in the gross produce of the land. By the Permanent Settlement the state made over this proprietary right, as against the cultivators, to the zamindar, for a fixed contract sum, reserving its sovereign right of protecting the cultivators of the soil against oppression.

(2) The Permanent Settlement has caused a heavy and unwarrantable sacrifice or future revenue to Government. But Mr. S. C. Mitter observes that under the Permanent Settlement there has been a considerable loss of revenue to the Government. That may be true as regards the present circumstances; but it must be remembered that at the time of the passing of the Regulations the Government urgently required the fixed land revenue which could be realised without any difficulty. Such a measure was imperatively necessary for the Government at that time. The policy of Lord Cornwallis in fixing for ever the land-tax payable to Government was a matter of necessity. The necessities of paying the great military and civil establishments of the Company and the dividends to the proprietors required punctual realisation of the land-tax and the amount needed was large. To avoid the fluctuation and ensure punctual realisation, some means were absolutely necessary to be adopted and the Government adopted not only the best, but as the event showed, the most successful one. The East India Company would have been reduced to bankruptcy, if they had not adopted the principle of permanent settlement. Taking all things into considerations the state has not suffered, in fact the ancient Rajas and the cultivators have suffered.

(3) The permanent settlement has avoided all the costs and evils of temporary periodical settlement and has expedited and assured the punctual realisation of revenue.

(b) on the zamindars :— (1) The permanent settlement is the Magna charta of the landed aristocracy of Bengal and Behar. It was beneficial to the zamindars as they were made the heredicary proprietors of the soil, subject to the payment

of a fixed amount of revenue to the Government. They were protected from periodical enhancements by the land-revenue being fixed in perpetuity. They were free to alienate the whole or part of their estates by gift, sale or otherwise and were entitled to let out the lands of their estates to the subordinate holders on any term they chose, subject to some restrictions. There were three parties whose relations had to be determined, viz., the State, the zamindar and the tenants under the zamindar. The relation between the State and the zamindar was fixed once for all by the P.S., but there was no law guiding the relationship between the zamindars and their tenants till 1859.

(2) At the commencement of the British rule, there were tow distinct classes of zamindars in Bengal differing in origin as well as in status. The first class of Bengal zamindars were territorial chiefs or ancient landed families having an independent title to their estates, subject to the payment of land-revenue, while a more numerous class consisted of farmers and revenue agents of the ruling power who had usurped the status of land-lords. The result of the permanent settlement on the status of the zamindars was to place all classes on a dead level of equality and to obliterate previous differences in customary status of several classes which had grown out of the difference in origin (Guha's Land-System).

(3) The system of attachment and sale of the defaulter's estate for arrears of revenue introduced by the permanent settlement led to the ruin of many ancient zamindaries. In fact within ten years immediately following the permanent settlement complete revolution took place in the constitution and ownership of the estates.

(4) The heavy assessment of revenue fixed by the permanent settlement and the defective way in which the assessment was made also led to the extinction of many ancient zamindari houses. The land-revenue was fixed by the permanent settlement without due reference to the productive powers of the land and other considerations. There was no attempt to measure the land or to estimate its average produce. The revenue in most cases was too exorbitant and out of proportion of the assets of the estate and required most attentive and active management to enable the land-holder to discharge his instalments with punctuality. But the zamindars were incapable of such management.

(5) The power of alienation conferred by the permanent settlement on the zamindars turned out to be another cause of their ruin. The easy going zamindars made so liberal a use of their power of alienation that very few of the ancient houses survived the commotion. In addition to this, the Code of 1793 gave the creditors and mortgagees unprecedented facilities for recovering their debts from the estates and considerably helped the ruin of many zamindars.

(6) The permanent settlement gave an enormous impetus to sub-infeudation of land. The revenue being fixed in perpetuity, Government was released from labour and risk involved in detailed mofussil settlement and the zamindars were not slow to follow the example set before them and immediately began to dispose of their zamindaries in a similar manner. Permanent under tenures, known as Patni tenures, were created in large numbers nad extensive tracts were let out on long terms. Inferior holders of tenure would follow the same practice till tenure within tenure became the order of the day. They were formally legalised in Regulation VIII of 1819 and means were afforded to the zamindar for recovering arrears of rent from his Patnidar almost indentical with those by which the demands of Government were enforced against himself. A small portion of the permanently settled area remained in the direct possession of the zamindar.

(c) on the Talukdars :—The independent Talukdars or those who paid revenue direct to the state were recognised as the actual proprietors of the land and were declared to have the same rights and privileges as the zamindars. But the dependent talukdars who used to pay revenue through a zamindar were reduced to the position of tenants.

(d) on the cultivators :—(1) The permanent settlement made the zamindars the actual proprietors of the soil and fixed for

ever the revenue payable to Government. But the zamindars were free to realise any rent they chose from their tenants. It is true that Government reserved the right under Sec. 8, Article 7 of Permanent Settlement Regulation to enact regulations for the protection and welfare of the cultivators of the soil. The power reserved by the Government for legislating in favour of the cultivators was not exercised till 1859. The history of these 66 years is a melancholy record of embittered relations between the land-lord and tenants which led to serious agrarian disturbances and ruinous litigations. During these years the Bengal cultivators were rack-rented and oppressed to such an extent that the Government of India was compelled to interfere on their behalf and to place them in a secure position by the series of legislative measures commencing with the rent Act X of 1859.

***11. Defects of permanent settlement :**—In addition to the defects mentioned above, the following may be mentioned as the defects of the permanent settlement :-

(1) Want of proper safe-guards for subordinate interest. The chief defect of the permanent settlement lay in the absence of any active provision for safe-guarding the subordinate interests. The rights of the tenants under the zamindars were not protected by the Permanent Settlement Regulation. As soon as the zamindars got a firm footing they began to oppress their tenants. The rents of the various tenures under the zamindars began to rise and moreover they did not fail to realise all sorts of illegal cesses from the poor raiyats and dependent Talukdars. The zamindars grew rich at the expense of their tenants.

(2) Sacrifice of future revenue—The Permanent Settlement has restricted the financial resources of future Government by declaring that the jama is fixed for ever.

(3) The Permanent Settlement has checked the growth of industrial and commercial development of the country. One important consequences of this institution has been to lock up all surplus capital in land and to encourage a tendency towards the accumulation of hearded wealth. The vast wealth

and commercial eminence attained by the merchant princes of the Bombay Presidency which is not under the Permanent Settlement are in striking contrast with the comparatively slender resources of the Bengal landowners.

(4) It was believed that the proprietors of land sensible of the benefits conferred upon them by the public assessment being fixed for ever would exert themselves in cultivation of their land under the certainty that they would enjoy exclusively the fruits of their own good management and industry. But they scarcely attempted to follow the policy of investing money on the soil with the object of increasing its productivity. On the other hand, they became addicted to all sorts of vicious luxuries and shifted their residence from the villages to the metropolis. The villages have become like stagnant pools where the ignorant multitude are living in the mud of superstition, while life in the metropolis has been vitiated by the evils of the land-lords.

CHAPTER – II

BENGAL LAND REVENUE REGULATION

BENGAL REGULATION II OF 1793.

Passed by the Governor-General in Council on the 1st May, 1793.

1. In Bengal the greater part of materials required for the numerous and valuable manufacturers and most of the other principal articles of export, are the produce of the lands : it follows that the commerce, and consequently the wealth of the country, must increase in proportion to the extension of its agriculture. But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare to these Provinces. The Hindus, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence; and the generality of such of the lower orders of the Natives as are not of that persuasion are, from habit or necessity, in a similar predicament.

The extensive failure or destruction of the crops that occasionally arises from drought or inundation is in consequence invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and the manufacturers, from whose labours the country derives both its subsistence and wealth.

Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily continue subject to these calamities until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which to a great decree, the untimely cessation of the periodical rains may be provided against and the lands protected from inundation; and as a necessary consequence the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive deficiencies in the annual

produce which may be expected to occur notwithstanding the adoption of the above precautions to obviate them.

To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of British Administration has been directed in its arrangements for the internal government of these Provinces.

As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landlords, and the revenue payable to Government from each estate has been fixed for ever. These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose.

The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government. With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the raiyats or tenants for each bigha of land in cultivation, of which after deducting the expenses of collection, ten-elevenths were usually considered as they right of the public and the remainder the share of the landholder.

Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury.

When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little

inducement to improve his estate, and monied men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself, was so precarious. The same causes, therefore, which prevented the improvement of land depreciated its value.

Further measures, however, are essential to the attainment of the important object above stated. All questions between Government and the landholders respecting the assessment and collection of the public revenues, and disputed claims between the latter and their raiyats, or other persons concerned in the collection of their rents, have hitherto been cognizable in the Courts of Mal Adalat or Revenue. The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decision to the Board of Revenue and from the decrees of that Board to the Governor-General in Council in the privileges which have been conferred upon them as secure, whilst the Revenue-Officers are vested with these Judicial powers.

Exclusive of the objections arising to these Courts from their irregular, summary, and often exparte proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another.

Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security therefore, must be given to landed property and to the rights attached to it before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue-officers must be deprived of their judicial powers.

All financial claims of the public when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature superintended by Judge who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants.

The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State. (Preamble).

***2. Object and Reasons of the Permanent Settlement :—**The main reason for the institution of the permanent settlement was to safeguard the interests of the zamindars who would then be in a position to improve the productivity of their lands. The East India Company found that the vast majority of the people in Bengal depended on agriculture for their subsistence and had thus to suffer untold hardship from periodical famines or inundations. The zamindars had no proprietary rights in the lands in their possession and were content to realise from the tenants the full amount of the rent in order to remit to the Government the required revenue. The revenue was constantly raised in the case of lands whose productivity was improved, for the Government had to make good the loss in revenue arising of the failure of crops in areas stricken by famine, flood or pestilence. "Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must

necessarily remain subject to these calamities until the proprietors of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and the lands protected from inundation; and as a necessary consequence, the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive, deficiencies in the annual produce, which may be expected to occur, notwithstanding the adoption of the above precautions to obviate them" (Regulation II of 1793).

The primary object of the permanent settlement was the improvements in agriculture. To effect these improvements, two fundamental measures were adopted viz. (1) the property in the soil had been declared to be vested in the land-lord and (2) the revenue payable to Government from each estate has been fixed for ever.

In addition to the reasons given above, the following may be considered as leading to the conclusion of the permanent settlement :-

(1) To put the revenue-paying agency on a definite footing and expedite and assure the payment of the revenue. "The policy of Lord Cornwallis in fixing for ever the land-tax payable to Government was a matter of necessity. The necessities of paying the great military and civil establishments of the Company and the dividends to the proprietors required the punctual realisation of the land-tax and the amount needed was large. To avoid fluctuation and ensure punctual realisation some means were absolutely necessary to be adopted and the Government adopted not only the best, but, as the event showed, the most successful one. The East India Company would have been reduced to bankruptcy, if they had not adopted the principle of permanent settlement." (S. C. Mitter's Tagore Law Lectures).

(2) The British administration of revenue previous to the permanent settlement had been in the highest degree fluctuating and uncertain. The country wanted rest from these constant changes and the establishment of permanent principles

was considered to be the great remedy for the evils consequent thereto.

(3) Under the English system of land-revenue the land-holder is the absolute owner of his land. The system is the pride of the English people and is said to be the mother of many blessings enjoyed by the tenantry in England. It was expected that by conferring on zamindars the same status as was enjoyed by the English land-lords, the benefits enjoyed by the tenants in England would be secured for the people of Bengal.

(4) The Government had also in view the creation of a contended middle class. Among this class were men of intelligence, public spirit and social influence and it was expected that when such men acquired property and found themselves in prosperous conditions, they were sure to be well-affected towards Government.

(5) There possibly was present in the mind of Lord Cornwallis a further latent hope that the zamindars, when they would grow rich, would patronize foreign luxuries and live up to a standard of comfort, thus enriching the custom house and the treasury by the duty and indirect tax which they would pay (Guha's Land system, pp. 91-92).

3. Object of Reg. II of 1793 :— The P. S. was concluded to give security to the land-holders in the enjoyment of their lands and for the improvement of agriculture. But the benefit cannot be derived as long as the questions between government and land-holders respecting the assessment and collection of revenue and the claims between landlords and tenants are decided in the Mal Adalat or revenue court of which the collectors of revenue were the presiding Judge. The objections were that the proceedings of these courts were irregular, summary and often exparte. It was therefore resolved to deprive the revenue officers of their judicial powers. Regulation II of 1793 abolished the Mal Adalat and transferred the trial of suits to the Dewani Adalat or civil court which will decide impartially between the public and the proprietors of land and also between the latter and their tenants.

CHAPTER-III

DECENNIAL SETTLEMENT REGULATION

BENGAL REGULATION VIII OF 1793

***1. Parties with whom settlement was concluded :**—The settlement under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination whether zamindars, Talukdars or Choudhuris (Sec. 4).

Exceptions :—The exceptions to the general order for the conclusion of the D. S. with the actual proprietors of the soil, include the following descriptions of persons :—

(a) Disqualified proprietors, that is;

(1) Females (excepting those whom the Governor-General in Council, may judge competent to manage their estate).

(2) Minors.

(3) Idiots.

(4) Lunatics or

(5) Others rendered incapable of managing their lands by natural defects or infirmities of whatever nature. (Sec. 20)

If the disqualified proprietors, referred to above, are the sole owners of their estates, their estates are to be managed for their benefit by persons appointed to the trust by Government (Sec.21). But if these disqualified proprietors are not themselves the sole owners of their estates, but are only partners in the estates held by them, with others who are not disqualified, these qualified proprietors or their guardians may jointly with their partners engage for the settlement of their estates and elect a joint manager for the management of their estates (Sec. 20).

(b) A further exception has been made to Proprietors in balance to Government, and unable to pay the arrears due from them; in which instances no settlement is to be concluded with the defaulting proprietors, but their lands are to be let in farm, or held khas, for a period of three years, at the discretion of the Collector. (Sec. 22).

2. Taluk :—The word taluk is derived from the Arabic word 'alak' which signifies to hang from, 'to depend upon' and means a dependence. Taluks are of two kinds; viz., (a) Independent taluk, and (b) Dependent taluk.

(a) Independent or Huzuri taluks which pay revenue direct to Huzur or Government :— hese are also called Khariza taluks i.e. taluks outside the zamindari estate and control. They constitute estates or proprietory interests analogous to those of the zamindars under the permanent settlement. This class comprises those that paid revenue direct to Government before the permanent settlement or that were separated from the zamindaries to which they appertained. Talukdars of this description differ but little from zamindaries, except in the limited extent of territorial jurisdiction.

(b) Dependent or Mazkuri or Shikami or Shamilat taluks which pay revenue through a zamindar or other actual proprietor of estate. These taluks are tenures and not estates within the meaning of the B. T. Act and do not constitute any proprietary interest as contemplated by the Settlement Regulations.

In Bengal, taluk was subordinate to the zamindari. The larger taluks were huzuri, i.e. they were immediately under the Government to which they paid their revenue direct; while the smaller ones were mazkuri, but when the revenue came to be collected through the zamindars, the smaller talukdars were directed to pay their revenue through this channel in order to avoid inconvenience of a multiplicity of small payments into the Khalsa or treasury of the state.

Government recognised the independent talukdars as actual proprietors of land and they were allowed to enter into direct engagements at fixed sum of revenue payable in perpetuity into the Collector's treasury. These taluks have the same incidents as the zamindaries and the talukdars have the same rights and obligations in relation to the estate as the zamindars. Regulation VIII of 1793 laid down distinct rules for the guidance of Collectors for separate settlement with independent talukdars. A large number of taluks was thus

separated and recognised as estates before the year 1802. Since 1802, no new independent taluk was created in this way.

Talukdars whose taluks have been ordered to be separated are not to be permitted to pay the revenue assessed upon their lands through the zamindars or other actual proprietors of estates. They are to pay their revenues in future immediately into the Collector's treasury, except in districts wherefrom the number of taluks, or other cause, this mode would be attended with considerable inconvenience, in which case tahsildars, or Native Collectors, are to be appointed to receive the revenue of the taluks in such districts. (Secs. 13 & 14).

3. Dependent Talukdars :—The followiong became dependent talukdars in Bengal, Behar and Orissa :—

(1) Talukdars, who, at the time of the D. S. paid their revenue through a zamindar or other actual proprietor and whose title deeds contained a stipulation that it should be so paid.

(2) Talukdars, holding under grants from zamindars or other actual proprietors which grants did not expressly transfer the property in the soil, but only entitled the talukdars to possession so long as they paid the rent reserved and performed the other conditions of the grant.

(3) Jangalbari talukdars holding on leases made in perpetuity to the grantee and heirs in consideration of clearing away the jungal and bringing the land into a state of cultivation exempt from revenue for a certain time and afterwards holding at a fixed amount of revenue, with the right of alienation.

(4) Invalid grants of revenue-free land not exceeding 100 bighas, resumed by proprietors, farmers etc. under the provisions of Sections 6 & 9 of Regulation XIX of 1793.

(5) Talukdars who did not apply for separation of their taluks within one year from the date of Regulation 1 of 1801.

4. Independent Talukdars :—The followiong were the independent talukdars in Bengal, Behar and Orissa :—

(1) Talukdars who purchased their lands at private or at public sale or obtained them by gift from the zamindar or other actual proprietor of land to whom they used to pay the revenues assessed upon their taluks or from his ancestors, subject to the payment of the established dues of Government and who received deeds of sale or gift of such land from the zamindar or Sanads from the Khalsa, making over to them his proprietary rights therein.

(2) Talukdars, whose taluks were formed before the zamindar or other actual proprietor of land to whom they paid their revenue, or his ancestors, succeeded to the zamindari.

(3) Talukdars, the lands comprised in whose taluks were never the property of the zamindar or other actual proprietor of the soil to whom they paid their revenue or his ancestors.

(4) Talukdars who succeeded to taluks of the nature of those described in the above clauses by right of purchase, gift or inheritance, from the former proprietor of taluks.

(5) Malguzari aima tenures held at a fixed quit revenue, under grants of the Mahomedan Government previous to the Company's accession to the Dewani or which were granted by proprietors of estates for a consideration received by them, were separated from the proprietors to whom they used to pay their revenue and considered as independent taluks. But malguzari aima tenures which were bona fide granted for the purpose of bringing waste lands into cultivation were considered as dependent taluks falling within the category of Jangalbari Taluks.

***5. Rules of Assessment. (a) Allowances of Kazis and Kanungos, and public pensions, to be added to the Jama** :—The allowances of the Kazis and Kanungos heretofore paid by the landholders, as well as any public pensions hitherto paid through the land-lords are to be added to the amount of the jama. These will be in future paid by the Collector of the district of the part of Government (Sec. 34).

(b) Assessment to be fixed exclusive of Sayar, with exceptions :—The assessment is to be fixed exclusive and indepndent of all duties, taxes and other collections, known under the general denomination of Sayar, excepting the

collections, made in the ganges, hats and bazars situated within the limits of the town of Calcutta and also the collections confirmed to the proprietors and holders of ganges, bazars and hats by the Governor-General in Council. (Sec. 35).

(c) Lakhiraj lands to be excluded from assessment :—The assessment is also to be fixed exclusive and independent of all existing lakhiraj lands, whether exempted from the Khiraj or public revenue with or without due authority (Sec. 36).

(d) Malikana lands and Nankar etc. not to be excluded from assessment :—The above exception, however, is not meant to include the malikana lands in Behar or the nankar, khamar, nij-jote and other private lands of the zamindars and independent talukdars or other actual proprietors of land in Bengal and Midnapur, regarding which the following rules have been prescribed. (Sec. 37).

(e) Malikana lands in Behar to be re-annexed :—Where the zamindars or other actual proprietors of land in Behar have resigned or have been deprived of, the management of their lands, retaining possession of a title as malikana, the latter is to be re-annexed, and the zamindars or other actual proprietors are to be required to engage for the whole of their estates, including the malikana lands : unless such lands be held as malikana under grants made or confirmed by Governor-General in Council or the Supreme authority of the country for the time being and have been sold or mortgaged, and given in possession to the mortgagee in which case they are to be exempted from this rule. Grants of malikana lands not made or confirmed by the supreme authority of the country, are declared invalid by the Regulations passed on the 8th of August, 1788. If the Collectors, however, should be of opinion that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Board of Revenue. (Sec. 38).

(f) Nankar, Khamar, Nij-jote and other private lands of proprietors in Bengal and Orissa to be annexed to the malguzari lands :—The nankar, khamar, nij-jote and other

private lands appropriated by the zamindars, independent talukdars and other actual proprietors of land in Bengal and Orissa to the subsistence of themselves and their families, shall be also annexed to the malguzari lands and the ten years jama fixed upon the whole under the following modification :— that such proprietors as may decline to engage for their lands be allowed the option of retaining possession of their private lands above specified, upon the terms on which they have hitherto possessed them, provided they shall prove, to the satisfaction of the Board of Revenue, that they held them under a similar tenure previous to the 12th August, 1765, the date of the grant of the Dewani to the Company, and have hitherto been permitted to keep possession of them, when ever the zamindaries or estates have been held khas or let in farm, but not otherwise.

In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction, adequate to the net produce of such lands is to be made from the allowance fixed for excluded proprietors by Section 44 (Sec.39).

(g) Consolidation of malguzari and private lands also in certain taluks :—The above consolidation of the malguzari and private lands is also to be made in the taluks continued under the proprietors on whom they have hitherto been dependent, not however, with a view to increasing the rents of the talukdars, but in order to make the whole of the lands composing their taluks answerable for their proportion of the public assessment allotted thereon. (Sec.40)

(h) Chakran lands to be annexed to malguzari lands :—The chakran lands or lands held by public officers and private servants in lieu of wages in each province are also to be annexed to malguzari lands and declared responsible for the public revenue assessed on the zamindaries, independent taluks or other estates in which they are included, in common with all other malguzari lands thereon. (Sec.41)

(i) Procedure in case of land-holders declining to engage for jama proposed to them :—In the event of any proprietor declining to engage for the settlement of his lands at the jama

proposed to him, the collector is to communicate the objections offered with his opinion respecting them to the Board of Revenue. The Board is to determine the proper assessment after making such farther enquiries as they may think necessary, and the objecting proprietor is to be required to engage for such assessment without further delay; and in the event of his refusal, which is to be given in writing, his lands are to be let in farm or held khas, as the Board of Revenue may, in each instance, think most expedient (Sec.43).

(j) Certain istimrardars not liable to increase of rent :– Istimrardars (Mukarraridars) who have held their lands at a fixed rent for more than 12 years, are not liable to be assessed with any increase either by the officers of Government or by the zamindar or other actual proprietor of land, should be engage for his own lands.

With regard to such istimrardars also, as have not held their lands at a fixed rent for so long a period, if the zamindar or other actual proprietor of land has bound himself, by the deed which he may have executed, and not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have agreed to receive (Sec.49).

(k) Exception to above :–This last restriction imposed on the zamindar or other actual proprietor of land is not to be considered to preclude the officer of Government or farmer, in the event of the zamindari being held khas or let in farm, from assessing such istimrardars according to the general rate of the district (Sec.50).

***6. Lakhiraj** :–(derived from la = non and khiraj = tribute, revenue) means land which does not pay revenue to Government. It is the largest estate or rights in land. The tenure possesses all the incidence and advantages of a zamindari tenure, with the additional advantage that it pays no revenue to Government; so it is not liable for arrears of revenue and consequently there is no mode of avoiding incumbrances created by lakhirajdars. The Regulations of 1793 divide revenue-free grants into two classes—Badshahi and non-Badshahi.

***7. Niskar** :—Niskar (derived from nis=not, and kar=rent) means rent-free as distinguished from Lakhiraj or revenue-free. The term revenue means the amount which is paid by the proprietor to the state, while rent is the amount payable by a tenant to his landlord under whom he holds, be he a proprietor, a tenure-holder, a raiyat or an under raiyat. Thus where the lakhirajdar is an owner of a revenue-free lands he becomes a proprietor and not a tenant.

8. "Nankar" :—Nankar (lit, bread for work) was an assignment of land or revenue for subsistence, consisting sometimes of one or more entire villages, sometimes of a portion only of a village. It was made, in some instances, to proprietors and in other instances, to persons having no proprietary rights, such as kanungos, choudhuries, kazis, who were generally, servants of the state and it was doubtless in this capacity that the allowance was made to zamindars, (Field). Nankar depends upon fidelity and attachment to the state.

***9. "Khamar, nij or nij-jote"** :—These expressions denote the proprietors private lands or lands appropriated to the subsistence of the proprietors and their families as distinguished from those let out to the tenants, which may be called raiyati lands and in respect of which the proprietors' rights are merely to receive a share of the produce or its equivalent in money as rent. It is only proprietors that can have private lands and not tenure-holders and others. Section 116 of the B. T. Act provides that no occupancy right or non-occupancy right can be acquired in a proprietor's private lands known as khamar, nij or nij-jote, zerat, sir or kamat where such land is held under a lease for a term of years or under a lease from year to year.

***10. Malguzari lands** :–All lands for which revenue has to be paid to Government are commonly referred to as malguzari lands.

***11. Chakran** :—Chakran or service tenure is a grant of land conferred by zamindars upon their servants or retainers in consideration of public or personal services to be rendered

by them. Before the advent of the British, the zamindars not only defended the country against foreign enemies with armed retainers but also administered the law and maintained order with a large force of rural police known as thanadars, phauridars, choukidars, paiks etc. who helped in protecting person and property, collecting revenue and doing other services personal to the zamindar. They were the servants of the zamindar, appointed and removed by him and often remunerated by grants of land, rent-free or at a quit-rent. The lands so held were called chakran or service-lands. A service tenure created for the performance of services, private or personal, to the zamindar may be resumed by him, when the services are no longer required or when the grantee refuses to perform them. A zamindar is not entitled to resume, when the grant is far service of a public nature. There are various forms of service-tenures of which the choukidari, thanadari and phauridari chakran, the Patwari, Paikari jagirs and the ghatwali tenures are the most important (Guha's Lands system, P. 415). The D. S. Regulation divided chakran lands into two classes, namely :—

(1) Thanadari lands, which were made resumable by Government under Cl. 4, Art.7, Sec. 8 of Reg.1 of 1793.

(2) All other chakran lands which by Section 41, Regulation VIII of 1793 were, whether held by public officers or private servants in lieu of wages, to be annexed to the malguzari lands and declared responsible for the public revenue assessed upon the whole estate.

12. "Istimrari mukarari tenure" :—Istimrari (or mourase) tenures are tenures granted in perpetuity. Mukarari tenures are those granted at a fixed rent and not liable to enhancement. Generally speaking, however, the two conditions are now found combined, and where the term is in perpetuity, the rent is fixed for ever. These tenures are transferable and inheritable, and may be protected by registration from the effects of a revenue sale. On failure of the heirs of the lessee, an absolute hereditary and mukarari tenure escheats to the Crown (now state) and does not revert to the grantor or his heirs (1 Cal. 319).

***13. Abwab :—**Abwab is the plural of bab—a head an item, and means item or 'miscellaneous items' i.e. of texation. When the Mogul authorities desired to levy an additional sum, the usual way of accomplishing their object was, not by increasing the original amount of revenue agreed for which the zamindar or farmer, but by imposing a tax for some particular purpose. The tax was levied in fixed proportion to the original jama or revenue. The purpose of pretexts, for which abwabs were imposed, were numerous. The following were some of the main abwabs levied by the Mahomedan rulers :—

(1) Chouth Maharatta, in order to pay tribute of $\frac{1}{4}$ of the jama to the Mahrattas.

(2) Abwab foujdari or fees for the support of the chief police magistrate and administration of criminal justice.

(3) Abwab radhari, for the repairs of roads.

The zamindars in their turn levied from the raiyats all the abwabs that they themselves had to pay, generally contriving to make a profit out of the transaction. They further imposed additional abwabs of their own devising and for their own benefit e.g.

(a) Abwab Mehamani to defray the expenses of the zamindar on his visiting the village.

(b) Haldari, a tax on marriage. Any unusual occurrance, a Governor's Visit or a petty war on some distant frontier was made a pretext for imposing a new cess (Field P.61).

The zamindars and other proprietors, being themselves exempted by the permanent settlement from imposition of any new abwab or cess by Government, were directed to revise the former cesses levied upon the raiyats, and to consolidate the whole with the asal (original rent) into one specific sum, after which they were strictly forbidden to impose any new abwab upon the raiyats under any pretence whatsoever. Every such exaction was to be punished by penalty equal to three times the amount imposed.

The B. T. Act also declares that all impositions upon tenants under the denomination of abwab, mathat or other

like appellation, in addition to the actual rent, shall be illegal and all stipulations for the payment of such shall be void (Sec.74 B. T. Act.). There are provisions in Sections 74A and 75 of the B. T. Act for imposition of fine for realisation of abwabs etc. and penalty for exaction by landlord from tenant of sum in excess of the rent payable.

What is or is not abwab must depend upon the circumstances of each particular case in which the question arises. If a particular sum specified in the lease is the lawful consideration for the use and occupation of the land, that is to say, if it is really a part of the rent, although not described as such, the landlord would be entitled to recover the same and the whole question in the case is whether the items claimed are really part of the rent, which was the consideration for the letting out of the land.

CHAPTER —IV

NON-BADSHAHI LAKHIRAJ REGULATION

(XIX OF 1793)

***1. Object and reasons of the Regulation :—**By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every bigha of land demandable in money or kind according to local custom. As a necessary consequence of this law, if a zamindar makes a grant of any part of his lands to be held exempt from the payment of revenue. It was considered void for being an alienation of the dues of Government without its sanction. Had the validity of such grants been admitted it is obvious that the revenue of Government would have been liable to gradual diminution.

But as a matter of fact previous to the Company's accession to the Dewani, numerous grants of this description were made not only by the zamindars, but by the officers of government appointed to the temporary superintendence of the collection of revenue under the pretect that the produce of the lands was to be applied to religious or charitable uses. Of these grants, some were applied to the purposes for which they were professed to have been made, but in general they were given for the personal advantage of the grantee or with a view to the clandestine appropriation of the produce to the use of the grantor or sold to supply his private exigencies. In conformity to the principles which prevailed under the native administration, the British which prevailed under the native administration, the British Government have at various times declared all grants for olding land exept from the payment of revenue, made since the date of the Company's accession to the Dewani, without their sanction, illegal and void. But all such grants made previous to that date were, however, held to be valid to the extent of the intention of the grantor as ascertainable from the terms of the writings by which the grant might have been made or from their nature and denomination, provided the grantees had obtained possession. But as there was no complete register of these

exempted lands, many zamindars. as well as the temporary farmers of the public revenue and the officers of Government to whom the collection of the revenue has been occasionally committed in consquence of the zamindars refusing to pay the revenue demanded of them, have taken advantage of the situation and made grants of extensive tracts of land to others, or in the names of their relations or dependents for their own use, dating the deeds for these alienations previous to the Company's accession to the Dewani or procuring them to be registered in the zamindary records as having been alienated prior to that period. Thus the Government was deprived of its just dues and the public revenue suffered heavily on account of the illegal alienations. With a view to facilitate the recovery of the public dues from lands held revenue free under the invalid grants and to prevent any similar alienation being hereafter made to the prejudice of the public revenue and to secure the rights of the grantees of valid grants, this Regulation (XIX of 1793) was passed, (Sec. 1).

Note : The main objects of this Regulation are :—(a) To try the validity of title of persons holding or claiming a right to hold lands exempted from the payments of revenue to Government under Non-Badshahi grants.

(b) To determine the amount of the annual assessment to be imposed on lands so held which may be adjudged or become liable to the payment of public revenue.

***2. Division of Non-Badshahi Lakhiraj Lands :**—The non-Badshahi lakhiraj lands dealt with in this Regulation may be divided into the following three classes :—

(A) Grants made previous to the 12th of August, 1765 (Sec.2).

(B) Grants made or confirmed since the 12th of August, 765 and previous to the 1st December, 1790 (Sec.3).

(C) Grants made since 1st of December, 1790 (Sec.10) .

(A) Grants made previous to the 12th August, 1765 declared valid :—(1) All grants for holding land exempt from the payment of revenue, made previous to the 12th August, 1765, the date of the Company's accession to the Dewani by what

ever authority and whether by a writing or without a writing, shall be deemed valid provided (i) the grantee actually and bona fide obtained possession of the land previous to the date above mentioned and (ii) the land has not been subsequently rendered subject to the payment of revenue by the officers or orders of Government.

But if it is proved that the grantee did not obtain possession of the land previous to 12th August, 1765 or that he did obtain possession of it prior to that date, but it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid. (Sec.2, Cl.1)

(2) Reference of doubtful claims to G. G. in Council :—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue under a grant made previous to 12th August, 1765, and of it being proved to the satisfaction of the Court, in which the suit may be instituted or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government and the Court entertains doubts as to the competency of such officer under the powers vested in him to subject the land to the payment of revenue, the Court shall suspend its judgement and report the circumstances to the Governor-General in Council who shall determine whether such officer was or was not competent to subject the land to payment of revenue.

No such claims, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for 12 years preceeding the date on which the claim may be instituted, shall be heard by any Court, unless the claimant can show good and sufficient cause for not having preferred the claim within 12 years. (Sec.2, Cl.2).

(3) No persons not being original grantees, entitled to hold lands free of revenue :—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold exempt from the payment of revenue land now subject to the

payment of revenue under a grant made previous to the Company's accession to the Dewani whether the writing for such grant expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the writing, or the writing not to be forthcoming or no writing to have been executed, where the grant from the nature and denomination of it is proved to be a life tenure only according to the usages of the country. (Sec.2, Cl.3).

(4) Nor also heirs of present possessors. —Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue under a grant made previous to the Dewani to succeed to and hold such land exempt from the payment of revenue upon the death of the present possessor where the writing for such grant expressly specify it to have been given for the life of the grantee only or where there is no such specification in the writing or the writing not to be forthcoming or no writing have been executed unless from the nature and denomination of the grant it is proved to the satisfaction of the court to be hereditary according to the ancient usages of the country. But upon the death of the possessor any such grant which is adjudged not hereditary under this clause, if it shall appear that one or more successions have taken place before the date of the Dewani, the lands shall not be subjected to the payment of revenue without the sanction of the Governor-General in Council. (Sec.2. Cl.4).

(5) Present possessors prohibited from transferring or mortgaging grants.—The present possessors of lands now exempt from the payment of revenue under such life-grants made previous to the Dewani and declared by the preceeding clause not to be hereditary, are prohibited from selling or otherwise transferring them or mortgaging the revenue of them for a longer period than their own lives and such transfers and mortgages are declared illegal and invalid. But if any such life grants have been confirmed as hereditary tenures by Government or any other officers of Government empowered so to confirm them, they are not to be liable to the payment of revenue on the death of the present possessor and

are exempted from the other rules contained in this and the preceding clause.

If doubt shall arise in any court as to the competency of the authority of any officer of Government to confirm any such life-grant as hereditary, the Court is to suspend its judgement and report the circumstances to the Governor-General in Council who shall finally decide on the point (Sec.2, Cl.5).

(B) Grants made since the 12th August, 1765 and previous to the 1st December, 1790, declared invalid. (1) All grants for holding land exempt from the payment of revenue, which may have been made since the 12th August, 1765, and previous to the 1st December, 1790 by any other authority than that of Government, and which may not have been confirmed by Government or by any officer empowered to confirm them, are declared invalid. (Sec.3, Cl.1).

(2) Courts how to proceed in case of doubt of authority of officer confirming grant. If doubts shall be entertained by any court as to the competency of the authority of any officer to confirm any such grants, the court is to suspend its judgement and report the circumstances of the case to the Governor-General in Council, to whom power is reserved of determining finally whether the officer possessed competent authority to confirm the grant or otherwise, and the court upon receiving the determination of the Governor-General in Council shall decide accordingly (Sec.3, Cl.2).

(3) Exemption in favour of grants made by chiefs of Provincial Council :—The rule contained in clause (1) will not apply to the following lands to the payment of revenue, namely :—

Lands held exempt from the payment of the revenue under grants made previous to the commencement of the Bengali year 1178 or fussily or wallaity 1179 (according as the land may be situated in Bengal, Behar or Orissa) under the signature of the chiefs of the late provincial councils and the seals of the councils agreeably to an authority vested in them by Government for granting land to be held exempt from the

payment of revenue, the annual produce of which did not exceed Rs.100. (Sec.3. Cl.3).

(4) And also of certain grants made for religious or charitable purposes :—Land held exempt from the payment of revenue under grants (whether for the life of the grantee or otherwise) made previous to commencement of the Bengali year 1178 or the fussily or wallaity, 1179 (according as the land may be situated in Bengal, Behar or Orissa) where the quantity of land granted does not exceed 10 bighas and the produce of it is bona fide appropriated as an endowment on temples or to the maintenance of the Brahmins or other religious or charitable purposes.

The rule in this clause is to extend also to all grants one and not exceeding 10 bighas made previous to the Dewani, the produce of which may be now so appropriated (Sec.3, Cl.4).

(C) Grants made since the 1st December, 1790, declared void. All grants for holding land exempt from the payment of revenue, whether exceeding or under one hundred bighas that have been made since the 1st December, 1790, by any authority other than that of the Government are declared null and void and no length of possession shall be considered to give validity to any such grant, either with regard to the property in the soil of the rents of it. Nor shall any such proprietor, farmer, or dependent Talukdar be liable to an increase of assessment on according of such grants, which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or taluk when the grant may be so resumed and annulled. The managers of the estates of disqualified proprietors and of joint undivided estates are authorised to exercise on behalf of the proprietors, the powers vested in proprietors by this Section (Sec.10).

Note :—(1) Grants made previous to the 1st December, 1790 and not exceeding 100 bighas, the revenue of which (when adjudged invalid) was by Sec.6, Regulation XIX of 1793, made over to the persons responsible for the discharge of the revenue of the estate within which the land included in such grants might be situated. The land included in such grants has

been expressly excluded from the D. S. and P. S. and therefore, the gift of the revenue assessed on these grants to the proprietors of the estates was an act of liberality on the part of Government.

The ex-lakhirajdar was not to be dispossessed, but was to hold the land, subject to the payment of revenue, as a dependent talukdar and the land would form a dependent taluk.

(2) Grants made after the 1st December, 1790, whether exceeding or not exceeding 100 bighas, (unless made by the Governor-General in Council) were in all cases null and void, and having been included within the limits of permanently settled estates, the proprietors of such estates were by Sec.10 of Regulation XIX of 1793, authorised and required to dispossess the grantees, annex the lands to their estates and collect the rents thereof, and this, without making any application to a Court of Justice, or sending previous or subsequent notice of the dispossession to any officer of Government.

With respect to the first class, on the contrary, proprietors were expressly required by Sec. 2, Regulation XIX of 1793, to institute suits in the court of Dewani Adalat for the recovery of the revenue made over to them by Government and were declared liable to damages if they subjected the lands to the payment of revenue without first having obtained a judicial decree (Field). Under Regulation II of 1805, the time-limit for bringing suits for resumption of lakhiraj land was 60 years, but under Act XIX of 1859, 12 years were fixed as the period of limitation for such suits. Consequently, so far as invalid lakhiraj lands held within the ambit of permanently-settled estates were concerned, the right to resume the same had long been extinguished. But an auction purchaser of an estate at a revenue sale always gets a new start and his suit for resumption of invalid lakhiraj lands within his estates is not barred by limitation, if brought within 12 years of purchase.

***3. Assessment of resumed Lakhiraj Lands :—(A) Rules of assessment :—** (1) Where the grant may have been made before the Bengali year, 1178 or the Fussily or wallaity, 1179, the

lands of declared liable to payment of revenue, shall be assessed only with half the revenue payable by the malguzari lands in the country.

(2) grants made subsequent to the aforesaid dates shall be assessed with the same revenue as payable by other lands under the D. S. (Sec.5).

(B) To whom the revenue assessed on lands belongs :—The revenue assessable on land that may have been alienated previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue under this Regulation —

(a) If the land does not exceed 100 bighas, it shall belong to the person responsible for the discharge of the revenue of the estate or dependent taluk in which the land may be situated, notwithstanding anything said to Sec. 8, Regulation 1 of 1793, and shall not be liable to the payment of any additional revenue on that account and the land shall be considered a dependent taluk. (Sec.6).

(b) If the land exceeds 100 bighas—The revenue shall belong to Government and the land shall be considered as independent taluk (Sec.7).

***4. Summary of Non-Badshahi Lakhiraj grants (Reg. XIX of 1793) :—**Non-Badshahi Lakhiraj grants were made by zamindars and officers of Government appointed to superintend the collection of revenue, generally under the pretext that the produce of the land was to be applied to religious or charitable use. The law applicable to these grants is contained in Reg. XIX of 1793, under which such grants are divided into three classes, viz.

(1) grants of dates antecedent to the 12th August, 1765 (the date of the Company's accession to the Dewani);

(2) grants made since the 12th August, 1765, but antecedent to the 1st December, 1790.

(3) grants made since the 1st December, 1790.

With respect to the 1st class, all grants, by whatever authority made whether in writing or not were declared valid (a) if the grantee had got possession and (b) the land had not subsequently been charged with revenue.

With respect to the second class, all grants which were not made or notified by the Government for the time being or by any officer duly empowered by it in his behalf were declared invalid. But grants made by the chief to the Provincial Council were held to be valid and so were grants of less than 10 bighas, the produce of which was bona fide appropriated for the endowment of temples and for the maintenance of Brahmins or other religious or charitable purposes, provided these latter grants were of date antecedent to the Bengali year 1178 or the fussily or wallaity 1179.

Grants of the second class so declared invalid were subdivided into (a) grants exceeding 100 bighas and (b) grants not exceeding 100 bighas. The revenue assessable on the former was declared to be the property of Government and these grants, when assessed, were to become independent taluks, that is, their revenue was to be paid direct to Government and not through any zamindar. The revenue assessable on grants of less than 100 bighas was made over by Government to proprietors of estates within which these grants were situated and they were authorised to levy rent upon the lakhirajdar, without being liable to pay any additional revenue. These grants were to become dependent taluks.

The third class includes grants made since the 1st of December, 1790, whether exceeding or not exceeding 100 bighas. These grants were in all cases, declared null and void and having been included by the settlement of 1793, within the limits of permanently-settled estates, the proprietors of such estates were authorised and required to dispossess the grantees, annex the land to their estates and collect the rents thereof. They would not be liable to any increase of revenue on account of such grants being resumed by them.

Lands included in the grants of the first two classes were expressly excluded from the D. S. and P. S. and the Government reserved the right to assess revenue upon the invalid lakhiraj grants.

CHAPTER—V

BADSHAHI LAKHIRAJ REGULATION.

(XXXVII OF 1793)

1. Object and Reasons of the Regulation :—By the ancient law of the country the ruling power is entitled to a certain portion of the produce of every bigha of land, unless it transfers its right thereto for a term or in perpetuity. As a necessary consequence of this law, every grant or alienation of Government's proportion of the produce of lands without its sanction is null and void. Had the validity of such grants or alienations been admitted, it is obvious that the public revenue would be liable to gradual diminution. But as a matter of fact under the native Governments, grants were occasionally made of the Government's share of the produce of lands for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops, and for other services. Such of these grants as were hereditary and were made before the date of the Company's accession to the Dewani were recognised by the British Government provided the grantees or their heirs had obtained possession previous to that date; but those grants which were for life only were declared resumable on the death of the grantees. There being to complete register of these grants, many persons have retained possession of lands under fabricated and antedated grants or have succeeded to life-grants on the death of the original grantee without the sanction of Government. With a view to resume the public dues from lands thus held under invalid grants as well as the revenue of all lands the grants for which might expire and also to secure quite possession and enjoyment to those persons who hold lands under valid grants, this Regulation with the following rules was passed (Sec.1).

2. (1) Badshahi grants made previous to Dewani declared valid :—Altamgha, jagir, ayma, madadmash or other Badshahi grants for holding land exempt from the payment of revenue, made previous to 12th August, 1765, the date of the

Company's accession to the Dewani, shall be deemed valid, provided (i) the grantee actually and bona fide obtained possession of the land so granted previous to that date, and (ii) the grant shall not have been subsequently resumed by the officers or under the orders of Government. If it be proved that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or under the orders of the Government, the grant shall not be deemed valid. (Sec.2, Cl.1).

(2) Procedure in case of doubts as to authority of officers who has resumed Badshahi grant :—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue under a Badshahi grant made previous to the date of the Company's accession to the Dewani and on it being proved to the satisfaction of the Court in which the suit may be instituted in the first instance or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government and the Court shall entertain doubts as to the competency of such officer under the powers vested in him to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgement and report the circumstances to the Governor-General in Council to whom a power is reserved for determining whether such officer was or was not competent to resume the grant and upon receiving the decision of the Governor-General in Council, the Court is to decide accordingly.

No such claim, however, to hold, exempt from the payment of revenue, land that may have been subjected to the payment of revenue for 12 years preceding the date on which the claim may be instituted, shall be heard by any Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within 12 years. (Sec.2 Cl.2).

(3) Persons not being original grantees not entitled to hold lands exempt from revenue :—But no part of the two preceding clauses is to be construed to empower court to adjudge any person, not being the original grantee, entitled to hold land exempt from the payment of revenue, under a jagir or other grants made previous to 12th August, 1765, where the grant expressly specifies it to have been given for the life of grantee only or (if there be no such specification) where from the nature and denomination of the grant it appears to be a life tenure only according to the ancient usages of the country. (Sec. 2. Cl. 3).

(4) Nor also heirs of persons now possessing exempted lands under life grants made before Dewani :—Nor to entitle the heirs of any person now holding lands exept from the payment of public revenue under the jagir or other Badshahi life grants made previous to 12th August, 1765 to succeed to and hold such land exept from the payment of revenue upon the death of the present possessor; where the grant expressly specifies it to have been given for the life of the grantee only or (supposing no such specification to have been made in the grant or the grant not to be forthcoming), where from the mature and denomination of the grant it appears to be a life-grant only accordingly to the ancient usages of the country. (Sec. 2. Cl. 4).

(5) Present Possessors not to transfer grants or mortgage revenue :—The present possessors of lands now exept from the payment of revenue under such jagir or other life-grants made previous to the Dewani are prohibited from selling or otherwise transferring them or mortgaging the revenue of the lands for a longer period than their own lives and all such transfers and mortgages, if made, would be illegal and void. (Sec. 2 Cl. 5).

3.(1) Grants made or confirmed since Dewani except by authority of Government declared invalid :—All Badshahi grants for holding land exept from the payment of revenue, which may have been made since the 12th august, 1765, by any other authority than that of Government, and which may not have been confirmed by Government or by any officer empowered to confirm them, are declared invalid. (Sec.3. Cl.1).

(2) Procedure in case of doubts as to authority of officer conforming grant :—If doubts shall be entertained by any Court as to the competency of any officer to confirm any such grant, the Court is to suspend its judgement and report the circumstances of the case to the Governor-General in Council to whom power is reserved of determining finally whether the officer possessėd competent áuthority to confirm the grant or otherwise; and the Court, upon receiving the determination of the Governor-General in Council, shall decide accordingly. (Sec.3. Cl. 2).

***Note :—Objects of Badshahi Lakhiraj Regulation :**—(1) To try the validity of the titles of persons holding or claiming a right to hold. altamgha, Jagir and other lands exempt from the payment of public revenue, under Badshahi or Royal grants.

(2) To fix the amount of the public revenue to be assessed upon the lands, the grants for which may expire or be adjudged invalid.

4. "Altamgha" :—(literally "red seal") means royal grants and formerly such grants were sealed with red seal. An altamgha was a royal grant in perpetuity to the grantee and his heirs. It was a transferable and revenue-free tenure.

5. "Jagir" :—The word Jagir is derived from Jah a place and geruftun, to lay hold of. Jagirs were grants of lands to military officers and servants of the state in lieu of wages. Jagirs were of two kinds, viz. (1) conditional and (2) unconditional.

Conditional jagirs were granted generally to the principal servants of the Emperor in order to meet the expenses of a particular office, and these were held only so long as the office was retained. Unconditional Jagirs were independent of any office and were personal grants for the maintenance of a dignity, a suitable number of attendants and the troops which the Jagirdar was bound to have in readiness. These were

grants for life only. If the lands produced more than the Mansubdar's or jagirdar's allowance which was always fixed, he was bound to account for the surplus. There were few jagirs in Bengal, but in Behar the number was considerable (Field).

A jagir which consists of revenue-free land is an estate. A jagir consisting of rent-free land made by proprietor of permanent tenure-holder may be a service-tenure or an ordinary tenure or holding according as it falls under one or other of the definitions of these terms in the B. T. Act (Guha, 525).

6. **"Ayma or Aima"** :—were grants rent-free or at a quit rent to learned and religious Mahomedans or for Mahomedan religious or charitable uses (Field).

The aimas are tenures granted for the purpose of clearing jungle or for other improvement, free of rent, or subject to small rent for the first few-years, and assessable subsequently at fixed or progressive rates. (Guha, 411).

7. **"Madadmash"** :—literally means "assisting subsistence". They were grants for the support of the learned and religious Mahomedans or of benevolent institutions. A madadmash grant was on condition of performing certian service or for the support of the grantees without services : or for religious purposes. The grant was in term implying perpetuity and mentioning the heirs of children of the grantees, but the grant was in practice revocable at the will of the Sovereign. (Phillips, 197).

***8. Summary of Badshahi Lakhiraj Grants** :—Badshahi grants were those made by the Sovereign for the support of pious or learned men or of religious or charitable institutions and the law applicable to those grants is contained in Regulation XXXVII of 1793.

There are different varities of Badshahi Lakhiraj, viz. (1) Jagir or grants to military officers or servants of the state in lieu of wages. (2) Altamgha or royal free gift, (3) Aima and Madadmash grants for the support of learned and religious Mahomedans or of benevolent institutions, (4) Nazarat grants for the support of mosques or masjids.

Regulation XXXVII of 1793 declared the validity of all Badshahi revenue-free grants made previous to the 12th of August, 1765, provided the grantee (1) had obtained possession before that date, and (2) had retained it since. All grants made or confirmed since that date, except under the authority of Government, or its officers duly empowered in this behalf, were held to be invalid.

CHAPTER -VI

BENGAL ALLUVION AND DILUVION REGULATION

(XI OF 1825)

***1. Object and Policy of the Regulation :**—In consequence of the frequent changes which take place in the channels of the principal rivers which interest Bengal and the shifting of the sands which lie in the beds of those rivers, chars or small islands are often thrown up by alluvion in the midst of the stream or near one of the banks and large portions of land are carried away by an encroachment of the river on one side, whist accessions of lands are at the same time or in subsequent years gained by dereliction of the water on the opposite side. Similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal. The lands gained from the rivers or sea by the means above mentioned are a frequent source of contention and affray and although the law and the custom of the country have established rules applicable to such cases, these rules not being generally known, the courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming chars or other lands gained in the manner above-described. With a view to remove this difficulty following rules have been enacted for the general information of the public as well as for the guidance of the Courts of Justice determining claims to lands gained by alluvion or by dereliction of river or the sea.·(See.1).

***2. Rules for determination of claims and disputes relating to alluvial lands :**—The following are the rules for the determination of claims and disputes relating to lands gained by alluvion :—

(1) The claims and disputes as to alluvial lands are to be decided by usage when clearly recognised and established. One instance of the usages referred to is that the main channel of a river dividing two or more continuous estates shall be the constant boundary between them, whatever changes may take place in the course of the river by encroachment on one side

and accession on the other. It would not matter whether the change of the course of the river is gradual or sudden. If the custom or usage is established, no question of an encroachment being gradual and impreceptible arises in a case to be governed by this section. As a result of established custom, the case is taken out of the ordinary law of alluvion and diluvion and has to be decided by a rule of custom immemorially estbalished (Sec.2).

The usage must be a local usage : the burden to prove it lies upon the person setting up and relying upon such usage. The usage must be clear, definite and immemorially established.

(2) Where there is no local usage of the nature referred to above, all claims and disputes relating to lands gained by alluvion or by dereliction either of a river or the sea shall be decided by the following rules :— (Sec.-3)

(1) Land gained by gradual accession from the recess of river or sea, to be considered an increment to the tenure of the person to whose estate it may be annexed :- When land may be gained by gradual accession from the recess of a river or the sea, it shall be considered an increment to the tenue of the person to whose land or estate, it is annexed, whether such land or estate be held immediately from Government by a zamindar or other superior landholder or as a subordinate tenure by any description of undertenant whatever :

Extent of interest in increment of person in possession. Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue, to which it may be liable under the provision of any Regulation in force.

Not, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a khudkast raiyat holding a maurasi tenure at a fixed rate of

rent per bigha or any other description of under-tenant liable by his engagement or by established usage to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable (Sec.4, Cl.1).

(2) Land suddenly cut off by a river, without any gradual encroachment and joined to another estate without its identity being destroyed to remain property of its original owner :—But when a river by a sudden change of its course breaks and intersects an estate without any gradual encroachment, or by the violence of its stream separates a considerable piece of land from one estate and joins it to another estate without destroying the identity and preventing the recognition of the land so removed. In such cases the land, on being clearly recognised shall remain the property of original owner (Sec.4 Cl.2).

(3) Char or island thrown up in a large and navigable river the channel between the island and the shore not being fordable to be at the disposal of Government; but if fordable to whom they shall belong :—When a char or island is thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall according to established usage be at the disposal of Government.

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure, or tenures of the person or persons whose estate or estates may be most continguous to it, subject to the provisions of rule (1) above with respect to increment of land by gradual accession (Sec.4. Cl.3).

(4) Chars, etc., thrown up in small shallow rivers :—In small and shallow rivers the beds of which, with jalkar (right of fishery) may have been herefore recognised as the property of individuals, any sand-bank or char that may be thrown up shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provision in the 1st clause of the present section (Sec.4 Cl.4).

(5) Disputes relating to lands gained by alluvion or by dereliction not provided for by Regulation :—In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the above rules, the Courts of Justice shall be guided (a) by the established local usage, if there be any, applicable to the case, or if not, (b) by general principles of equity and justice (Sec. 4, Cl. 5).

***3. Reformation in Situ :**—The rules are subject to a very important proviso introduced by Courts of Justice in consonance with the general principles of equity and justice which the legislation requires them to follow. The Proviso may be summed up as follows :—

Where an estate is gradualy swallowed up by river or sea and afterwards re-appears on the old site and is capable of identification, it is the property of the original owner and not an accretion to the estate to which it is annexed, unless there has been an abandonment by the original owner. The leading case on the point is Lopez V. Madan Mohan Thakur (See the leading case).

4. Encroachments on beds of navigable rivers and other obstruction. Law relating to Towing paths on the bank of rivers :— Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels on navigable rivers, or to prevent the zila magistrates or any other officers of Government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respect obstruct the passage of boats by tracking on the banks of such rivers or otherwise (Sec. 5).

***5. Shikast Paiwast :**—Shikast (literally, broken) applies to land lost by diluvion. Paiwast (lit, joined, united) applies to land gained by alluvion.

6. "Alluvion." :—Literally means land gained from a river or the sea by the washing up of sand and earth. Alluvion comes from Alluvio meaning an imperceptible and gradual

deposit of sand and earth from a river or the sea. "Alluvion may be defined as an addition to riparian land gradually and imperceptibly made by the waters to which the land is contigenous." "Alluvion is an imperceptible increase ; and that is added by alluvion which is added so gradually that no one pèrceives how much is added at any one moment of time. The deposit of earth gradually formed by alluvion upon the bank of river is inseparable from the native soil of the bank and the owner of the latter acquires the former by right of accession." (Justinian).

7. "Diluvion" :—(Latin di. away from, luere, to wash) means the submersion or the washing away of the surface soil by a river or the sea.

8. "Dereliction" :—The word "dereliction" is generally used to denote a sudden and perceptible retreat of the sea or a river and the expression "derelict land" more often means land left bare and uncovered by water by such sudden and perceptible retreat of the river or the sea.

***9. Persons Entitled To Accreted Land** :—(1) A lakhirajdar is entitled to accretion to his tenure within the meaning of Sec.4 Col.(1). There is nothing in Regulation XI of 1825 to deprive him of his right but he must pay rent for the accreted land. (18 C. W. N. 1206)

(2) An occupancy raiyat is entitled to the benefit of Sec.4 of Regulation XI of 1825 and when there is an accretion to his holding, subject to payment of increased rent on account of the accretion and the zamindar cannot take them away and settle them with other parties. (6 C. L. R. 363 : 21 Cal. 233).

(3) A non-occupancy riyat also can claim the benefit of Sec.4 of Regulation XI of 1825 and is entitled to hold the lands accreting to his holding (8 C. L. J. 541). But a tenant from year to year is not entitled to the benefit of the Section (33 Cal. 444).

(4) The right of an ijaradar or other lessee to the alluvial accretions to his lease has been established by Section 108, Cl.(b) of the T. P. Act which runs thus :—"If during the continuance of the lease any accession is made to the property, such accession shall be deemed to be comprised in the lease."

(5) The right of a patnidar to the accretion to his patni tenure has been established in the case of Mukta Keshi Debya V. The Collector of Burdwan (12 W. R. 204).

(6) The right of a tenure-holder to the accretion to his tenure as against the zamindar has been established in the case of Suste Ojah V. Beechuk Oija (1859 Sud. D. R. 1617). It has been held in this case that the zamindar is bound to settle with the Mukarari tenure-holder, the land which accretes to such tenure under Cl. 1 of Sec.4 of Reg. XI of 1825.

(7) A mortgagee is also entitled to any alluvial accretion to the mortgaged property as declared by Sec. 70 of the T. P. Act.

***10 Right of Jalkar or fishery** :—The right of fishery in non-navigable rivers depends on the ownership of the adjacent soil. In such cases, the right arises as a corollary to the right of proprietorship of the land.

But the right of fishery in navigable rivers may be granted by the Government and will not be extinguished even though the river may change its course. The Rivers in our country are very apt to shift their course and under the circumstances if the right of fishery in a river was to cease whenever it changed its course, the right would be very flimsy one. The righ of fishery in a navigable river once granted by the Government will continue even if the river changes its course and runs through the property of any private individual. And again if a channel breaks through another person's land, the right of fishery of the original grantee in the main river continues even in the channel, to the exclusion of the former. The English law on the point is different. The Privy Council observed an Srinath V. Dinabandhu Sen that the rules applying to the slow running, unchanging rivers of England should not be applied to the swift and ever-shifting waters of Bengal.

The truth in the saying, "The fish follows the river and the fisherman follows the fish", has been recognised by the judiciary in India and Pakistan. The right of fishery (Jalkar) in a public navigation river is regarded in this country as an incorporeal right and has no reference to the ownership of land adjacent to the tract or stream of water in respect of which the right of fishery is exercised.

The Law of Jalkar is found in the Leading case of Srinath V. Dinabandhu Sen (42 Cal. 489 P. C.). (See leading case).

CHAPTER —VII
Bengal Patni Taluk Regulation
(VIII of 1819)

***1. Object and policy of the Regulation (Sec.1) :**—The Patni Taluk Regulation was passed with a view :—

(1) The regulate and define the nature of patni Taluk.

(2) To declare the legality of the practice of under-letting in the manner in which it has been exercised by the Patnidars and others.

(3) To make provisions to protect the under-lessee from any collusion of his immediate superior with the zamindar or other for his ruin.

(4) To secure the just rights of the zamindar on the sale of any tenure under the stipulations of the original engagements entered into with him.

(5) To lay down the procedure by which the said tenures are to be brought to sale and the form and manner of conducting such sale.

(6) To allow the zamindar means of realising his dues in the middle of the year as well as at the end of the year.

(7) To extend this rule of realisation of dues twice a year in all cases in which the right of sales may have been reserved at the end of the year only. In other words, to extend the right to mid-year and year-end sales to cases where year-end sale is only stipulated for.

***2. Origin of Patni Taluk :**—At the permanent settlement, the Government by abdicating its position as the exclusive possesssor of the soil and contending itself with a permanent rent charge on the land, escaped thenceforward the labour and risks attendant upon detailed mofassil management. The zamindars were not slow to follow the example set before them and immediately began to dispose of their zamindaries in a similar manner, as the system afforded them the escape from the ruin threatened by the high assessment of land-revenue made at the time of permanent settlement.

The Patni Taluks have their origin in the estates of the Maharaja of Burdwan. The estates of the Maharaja were saved by the creation of Patni Taluks. The assessment of land-revenue on the estates settled with the Burdwan Raj was very high. For easy and punctual realisation of rent, leases to middlemen in perpetuity and at fixed rent were granted to a large number of intermediaries, who were thus made proprietors in the same way as the Government has made the Maharaja of Bardwan a proprietor. By degrees the system extended to other zamindaries and by the year 1819 there was a large number of Patni taluks, especially in the districts of Hoogly, Burdwan, Bankura, Nadia and Purea that they were formally legalised by Regulation VIII of that year and means were afforded to the zamindars of recovering arrears of rent from their Patnidars almost identical with those by which the demands of Government revenue were enforced agains themselves (Tagore Law Lectures, 1895; Roy's Patni Sales Law P.4).

***3. Nature of Patni Taluk :—**The original meaning of the word "Patni" seems to be settled and it means a dependent tenure settled in perpetuity at fixed rent.

A patni taluk is heritable, capable of being transferred by sale, answerable for his personal debts and subject to the process of the civil court in the same manner as other immovable property. a Patni taluk is not liable to be cancelled for default in payment of the rent thereof, but the tenure may be brought to sale by public auction and the defaulting Patnidar is entitled to any surplus sale-proceeds beyond the arrears of rent due thereupon. A patni talukdar is entitled to let out the lands of his taluk in any manner most conducive to his interest and any engagements entered into by such talukdar with others are legal and binding between the Parties to the same, their heirs and assignees : Provided, however, that no such engagements shall operate to the prejudice of the right of the proprietor to hold the patni taluk answerable for any arrear of his rent in the sate in which he granted it and free of all incumbrances resulting from the act of his tenants, the Patnidar (Sec.3).

The Patni was liable to summary sales, under Regulation VIII of 1819 for arrears of rent. The liability to summary biennial sales at the instance of the zamindar is a feature which distinguishes the Patni taluks from other permanent tenures. The summary sales may be availed of only in case of arrears of rent due on account of the current year (in the case of the mid-year sale) or of the year just expired (in case of the first sale). The antecedent rents due for previous years cannot be realised by summary sale under the Regulation. They, being mere personal debts, must be recovered in the same way as other debts by a regular suit in Civil Courts. The zamindar has, however, the additional right of bringing Patni taluks to sale under the ordinary procedure laid down for other classes of tenures and the effect of such a sale is the same as to the right of the purchaser to avoid incumbrances and to get other right as in sales under the Regulation.

The Patni Regulation gives the zamindar the right to realise the rent by a summary procedure and that summary procedure is restricted only to periodical rents. But the zamindar is not bound to realise his rent every six months. He can wait for a longer period, he can proceed under the general law for the realisation of his rent. Section 195(e) of the B. T. Act provides that the Act would not apply to enactments relating to Patni tenure. But where the patni Regulation is silent, the provisions of the general Rent-law would apply. This has been settled by authorities. The Patni Regulation is silent, for instance, as to the realisation of rent beyond one year and therefore, the zaminder is entitled to bring his suit under the ordinary rent-law.

The Regulation does not take away the rights of the zamindar to proceed in the ordinary way under the general law to recover arrears of rent. It only given him an additional right to recover rent by a summary process of sale which is restricted to the recovery of rent for one year only. The Patni Regulation was in force for more than a century and Patni tenures were sold under the provisions of the B. T. Act and no objection had ever been realised that a patni tenure could not be sold under the provisions of that Act, There is no difference

between the Patni taluks and other tenures in respect of the applicability of Section 63 of the B. T. Act. Accordingly, under the express provisions of Section 65 B. T. Act, the zamindar is entitled by a suit under the Act, to bring a Patni to sale with the consequences prescribed by the Act.

A patni is not in all respects similar to a mourashi mokarari tenure.

***4. Comparison between M. M.T. and Patni Taluk :—**There are many points of similarity between mourashi mokarari tenure and Patni tenure. Both are (1) held for an unlimited time, (2) at a fixed rent, (3) heritable, (4) transferable, (5) capable of being sublet, and (6) not liable to ejectment for arrears of rent.

Contrast :—(1) As to the nature of the tenure, the interest of a patnidar seems to be of a higher order.

(2) Though both are exempted from ejectment for arrears of rent, and both may be sold for arrears, a patni taluk may be sold for current arrears, without a decree for the arrears, under the summary procedure prescribed by the Patni Taluk Regulation. A mourashi mokarari tenure, on the other hand, may be sold under the B. T. Act, only in execution of a decree for arrears passed under Section 63, B. T. Act.

(3) On a sale of the zamindari for arrears of revenue a mourashi mokarari tenure may be protected (a) if it exists at the time of the permanent settlement, or (b) if it has been held at a fixed rent from the time of the permanent settlement. But a patni would not be protected unless it comes under section 37 and 39 of the Revenue Sales Act XI of 1859.

(4) On failure of heirs, the Patni tenure reverts to the zamindar, but a mourashi mokarari tenure escheats to the state.

(5) The transferability, heritability and other incidents of mourashi mokarari tenures are governed by the B. T. Act. while the incidents of Patni tenure are governed by the Patni Taluk Regulation of 1819.

5. Creation of Patni by proprietors of temporary settled estates :—A Patni taluk cannot be created by the proprietor of a temporary-settled estates. A patni taluk has been defined in the preamble to this Regulation as a taluk created by the zamindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. Consequently, it cannot be created in a temporary settled estate. He cannot create a permanent tenure at a fixed rent, because his own engagement is not a permanent one.

6. Creation of Patni by a Hindu Widow :—A Hindu widow can create a valid Patni on her husband's estate, if there is legal necessity to justify the alienation. She is not a tenant for life, but is the owner of her husband's estate, the Patnidar acquires no more than life-interest of the widow, if there is no legal necessity to justify the lease. The grant of a Patni by her without legal necessity is not, however, void, but only voidable and may be validated by the consent of the reversioner. Even when there is no longer necessity, she can validly create Patni on her husband's estate which has devolved on her with the consent of the next reversioner. The consent of the reversioner is effective even when given after the execution of the deed of transfer. In order to set aside a Patni lease granted by a Hindu widow, the reversioner must bring a suit within 12 years from the date on which the cause of action arose.

7. Creation of Patni by Mahomedan widow :—Under the Mehomedan Law, the mother is not the legal guardian of the property of her minor children. She is merely a de facto guardian—a bare custodian of the property and has no power to sell, mortgage, or otherwise deal with immovable property belonging to them. In Imambandi, V. Mutsaddi (45 I. A. 73, 83), their Lordship of the Privy Council held that the mother has no large powers to deal with her minor child's property than any outsider or non-relative who happens to have charge for the time being of the infant and any transfer by the mother is wholly void. In Mohamed Amin, V. Vokil Ahmed (A. SC.358), it has been held by the Supreme Court of India that a de-facto guardian has no authority to enter into a family settlement in respect of a minor's property, even though the settlement might be for his benefit. Therefore, a Mehomedan mother has

no power to create a Patni taluk in the estate of her minor child.

8. Creation of Patni by Shebait :—A grant of a Patni lease by a shebait of a debutter estate is not necessarily void, provided that it is made on account of unavoidable necessity. In this respect the power of a shebait is similar to that of a manager of a minor's property. A permanent lease of debutter property is void, if it is not made for legal necessity. Where there is an unavoidable necessity compelling the shebait to alienate the property, such an allientation is clearly for the benefit of the deity. But if there is no such necessity, the fact that the value of the estate will be increased if an alienation by sale, mortgage or otherwise is effected, will not justify such a transaction, although it may be that thereby the endowment will be benefited. The period of limitation in such cases is governed by Section 10 and not article 134 of the Limitation Act.

9. Intermediate interest between a zamindari and a Patni tenure :—Acoording to the later decision of the Calcutta High Court, an intermediate interest can be created between a zamindari and Patni (41 C. W. N. 364; 34 C. L. J. 77). Earlier decision in 14 C. W. N. 389 was that a zamindar cannot lawfully create a permanent tenure between his own interest and a Patni taluk of the first degree. So, where a zamindar grants a lease above a Patni, it should be construed to be only an assignment of the rent payable to the zamindar and there is no relationship of landlord and tenant between the so-called lessee and patnidar.

The mere giving of the name of a Patni to the interest created between the zamindar and the Patnidar does not make it a patni as contemplated by the Patni Regulation. A sale of such interest under the Regulation is without jurisdiction and the purchaser acquires no title. Such a purchaser's right can be questioned by the defendant Patnidar in a suit brought by him for rent (50 Cal. 146).

There can be no objection to the assignment of the right of the zamindar to receive rent from the Patnidar which he is entitled to get under the Patni settlement; for example, he may

create an ijara or he may execute a mortgage and make over possession to the mortgagee. In such cases, the assignee of the zamindar's interest would be entitled to recover rent from the Patnidar by virtue of the assignment even though there may be no relationship of landlord and tenant between the assignee and the Patnidar. In 60 Cal. 1092 it has been held that a zamindar who has carved out a patni tenure is competent to interpose between himself and his tenant an intermediate holder who may realise the rent payable to himself by his original tenant, provided that he does not thereby prejudice the position of the first tenant. Such interest, even if described as a Patni, will not itself have all the incidents of a Patni tenure attached to it. But it there is a stipulation in the contract between the zamindar and the intermediate tenure-holder that the tenure would be liable to be sold under the summary process provided in the Patni Regulation, such stipulation would be perfectly valid. The existing Patnidar would have his rights intact as under the patni-patta. He is not affected by the sale of the intermediate interest, as his interest does not come within the range of encumbrance or annulable interests under Section 11 of the Patni regulation.

***10. Incidents of Patni Taluks (Sec. 3).** (1) Patni tenures declared valid, transferable and answerable for debt—Patni taluks are tenures in perpetuity at a fixed rent, heritable transferable, answerable for debts and subject to the process of courts. The tenure know by the name of Patni taluks, as described in Section 1 of this Regulation, shall be deemed to be valid tenures in perpetuity according to the engagements under which they are held. They are heritable and capable of being transferred by sale, gift or otherwise at the discretion of the holder, as well as answerable for his personal debts and subject to the process of the Courts in the same manner as other real property.

(2) Patnidars are competent to under-let in any manner most conductive to their interest :— Patni talukdars shall be competent to let out the lands comprising their taluks in any manner they may deem most conductive to their interests and any engagements so entered into by such talukdars with

others shall be legal and binding between the parties to the same, their heirs and assignees : Provided, however, that no such engagement shall operate to the prejudice of the right of the zamindar to hold the superior tenure answerable for any arrear of his rent in the state in which he granted it and free of all incumbrances resulting from the act of his tenant.

(3) Patni tenures are not voidable for arrears, but liable to be sold by public auction, the patnidar being entitled to surplus sale-proceeds :—In case of an arrear occurring upon any patni tanure, it shall not be liable to be cancelled for the same, but the tenure shall be brought to sale by public auction and holder of the tenure will be entitled to any excess in the proceeds of such sale beyond the amount of the arrear of rent due, subject, however, to the provisions contained in Section 17 of this Regulation.

(4) Rate of interest at $6\frac{1}{4}$ p.c. :—Subject to the provision of section 14A of this Regulation, an arrear of rent shall, notwithstanding anything contained in any other section of this Regulation or in any engagement between the zamindar and the talukdar whether entered into before or after the commencement of the Bengal Patni Taluk Regulation (Amendment) Act. 1941, bear simple interest at the rate of $6\frac{1}{4}$ per cent per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of sale of the tenure under this Regulation or of the institution of a suit for arrears of rent, whichever is earlier.

***11. Right of Patnidar to resumed chakran lands :**—The expression "Choukidari Chakran Lands" means lands held on service tenure by choukidars or Village Watchmen who rendered acts of personal service to the zamindar.

Before the advent of British rule, the zamindars were entrusted with the defence of the territory against foreign enemies, and with the administration of law and order within their zamindaries. They had to employ not only armed retainers but also a large force of thanadars or a general police force and other officers under the names of choukidars. Paiks etc. for the maintenance of order, protection of life and property, the collection of revenue and other services personal to them. All these different classes of officers were the servants of the zamindars, appointed by them and removable by them. They were remunerated in many cases by the grant of land rent-free or at a low rent in consideration of their services. The lands so granted were called chakran or service lands.

The Choukidari Chakran Lands were assessed at the same rate as other revenue paying lands by the D. S. and the P. S. All resumed choukidari chakran lands were transferred to the zamindars of the estates within which they were situated by the Village Choukidari Act of 1870 (Sec. 48). Now the question is whether the patnidar is entitled to claim the resumed choukidari chakran lands.

It is a general principle of law that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and the legal incidents thereof. Unless therefore there is an express reservation, the patnidar is entitled to the settlement of the resumed chakran lands. Thus where a patni lease conveyed to the Patnidar all the lands of which the zamindar at the time of the execution of the lease possessed in the mouza included choukidari chakran land, it was held that on resumption by the Government and a settlement with the zamindar under Act VI of 1870, the patnidar became entitled to possession of the choukidari chakran land, subject only to payment to the zamindar of extra assessment of rent imposed on account of the resumed land (11 C. W. N. 201). But if in assessing the Patni rent, the profits of all the lands including the chakran lands were fully taken into account the patnidar would not be liable to pay additional rent for the chakran lands when they came into his possessions (5 C. L. J. 52).

Under Section 41, Regulation VIII of 1793, the choukidari chakran lands must be taken to have formed part of the estate which was settled with the zamindars. They were annexed to malguzari lands and declared responsible for the public

revenue assessed on the zamindari. Upon resumption of choukidari cakhran land and transfer of the same to the zamindar, the patnidar is entitled, if the land is covered by the Patni lease, to bring a suit for recovery of possession and not for specific performance of the contract. The period of limitation of such a suit is governed by Art. 142 or 144 of schedule 1 of the Limitation Act.IX of 1908.

The leading case on the point is Ranjit Sing V. Kalidasi (44. I. A.117).

The position of Government and zamindar in respect of resumed C. C. L. :—The right of the Government is such lands has been defined in secy of State V. Kirtibash (42,I. A. 30). It was held in this case that the Government can resume such choukidari chakran lands if such lands had not been taken in consideration while the jama was fixed, though such lands might have been included in the malguzari lands of any estate. The Court will presume that every piece of land held as malguzari by any zamindar had been taken into account in fixing the jama under Section 41 of Regulation VIII of 1793, and burden lies on the Goverment to prove that any piece of land though held as malguzari had not actually been taken into account while the jama was assessed.

***12 Right to minerals :**—It is a well-established principle of law that a conveyance of land is prima facie a conveyance of the entire solum from the surface down to the centre of the earth, including the mines, quarries and minerals beneath or within it. So a grant of patni tenures in the absence of express limitation carries with it all the grantor's right, title and interest in the mines and minerals and the Patnidar would possess all under ground rights in the absence of express reservation by the zamindar. This view seems to be in consonance with the English legal ideas and was taken by the Court in some earlier cases.

But this view has been held to be incorrect by their Lordships of the Privy Council as in their opinion, the zamindar must be presumed to be the owner of the underground rights in the absence of any evidence that he has parted with it. As in the case of other permanent, heritable and transferable tenures created by a zamindar, the sub-soil rights will pass under a patni only when granted in express terms.

The proper test is not whether nothing is expressly excluded, but what to expressly granted and general words covering all interests are not sufficient to pass sub-soil rights in the absence of express words to that effect. Upon a grant of only the surface rights by a zamindar, he remains the owner of the sub-soil. A recital in the Patni deed that the grantee shall be in possession of "all the zamindary rights and interests in the land included in the mouza" does not convey the sub-soil rights to the grantee.

It is now well settled in the case of Sashi Bhusan V. Raja Jyoti Prasad that when a grant is made by a zamindar of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of evidence to that effect. (44. I. A. 46).

13. Rule as to the Liability for landlord's fee and security in case fo transfer. (Secs. 5 & 6) :— Sections 12 and 13 of the B. T. Act do not apply to Patni tenures which have been expressly excluded by Section 195 (e) of the same Act.

The Patnidar has the right to transfer his taluk and a zamindar cannot refuse to give effect to alienations made by the Patnidar. But the zamindar is entitled to receive a fee fixed at 2% of the annual rent of the transferred taluk, the maximum being Rs.100 and could demand also substantial security from the transferee to the amount of half the jama as provided in Section 5 of the Patni Regulation. But this section has been ammended by Bengal Act XV of 1940 which provides that "notwithstanding anything contained in this Regulation, the provisions relating to security shall not, after the commencement of the Bengal Patni Taluk Regulation (Amendment) Act, 1940, apply to the transfer of a Patni Taluk or a share or a portion thereof".

Before the Amendment Act of 1940, the zamindar could refuse to register the name of the new transferee in his sherista for non-payment of fee and security. The omission by transferee from a patnidar to pay the fee and security to the

zamindar does not affect in any way his title. His rights are perfected upon the transfer by the patnidar and are not in any way contingent for their validity upon the payment of fee and security. The refusal to register the name of a transferee meant that the original patnidar remained personally responsible for the payment of the rent and the zamindar was not bound to accept rent from an unregistered transferee.

After the Amendment Act of 1940, the patnidar need not pay the security but he is to pay the fee on transfer at the rate of 2% on the jama and the maximum being Rs. 100. If the fee is not paid the zamindar is not bound to recognise the transferee (Sec.6, Cl.1) and may sell the tenure in execution for arrears of rent obtained against the registered tenant.

The zamindar is not bound to accept payment of rent from an unregistered transferee of a Patni nor is he bound to recognise any deposit of rent made by such a transferee in his own name. The registration of name in the zamindar's sherista relieves the outgoing patnidar of all personal liability as to the payment of rent subsequent to the cessation of his possession while it enables the transferee to deal directly with the landlord and affords him better opportunity of protecting his tenure. Unless a purchaser's name is registered in the landlord's sherista, the landlord may recover his rent from the registered patnidar.

A person who has purchased a patni at a sale in execution of a money decree, but has not registered his name in the landlord's sherista, is bound by a subsequent decree for arrears of rent obtained by the landlord against the registered patnidar of such decree and is therefore a representative of the judgement-debtor within the meaning of Sec.47 of the C. P. C. (32 Cal. 1031).

The rules regarding fee are equally applicable to private as well as public sales in execution of decrees other than decrees for arrears of rent due on the Patni-tenure. But in the case of a sale held either under the Patni Regulation or in execution of decree for arrears of rent due on the tenure the purchaser is entitled to have his name registered and to have possession without fee.

***14. Opening of separate accounts (Sec. 6A) :—**(1) Sec. 6A of the Patni Taluk Regulation prescribes the procedure to open a separate account. This section has been inserted by Bengali Act XV of 1940. There was no provision for opening a separate account before 1940.

If a holder of a share or a portion of a patni taluk intends to pay his share of the rent to the zamindar separately, he is permitted to do so under the new section. In that case he may submit to the collector a written application furnishing necessary particulars. On receipt of such application, the collector shall cause a copy of it to be served on published in such manner as may be prescribed by rules made by the Provincial Government.

(2) If no objection is received by the collector from any co-sharer of the applicant or from the zamindar or any of his co-sharers within 6 weeks from the time of service or publication of the copy of the application, whichever is later, the collector shall direct the zamindar or zamindars to open a separate account in the name of the applicant to which all payments made by him shall be credited separately to his share. The date on which the collector directs the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

(3) If any of the co-sharers of the applicant or the zamindar or any of his co-sharers object that the applicant has no right to the share claimed by him, or that his interest in the patni taluk in less or other than that claimed by him, or that the amount of rent stated by the applicant to have been paid on account of such portion of land is not the amount which has been recognised by the other sharers as the rent thereof, the collector shall refer the parties to the civil court and shall suspend proceedings until the questions at issue is judicially determined.

(4) Whenever an order to open a separate account is made in respect of a share or a portion of a Patni taluk under Sub-Sec. (2) or whenever a Patni Taluk is divided or the rent payable in respect thereof is distributed under sec. 6B, if the

taluk shall become liable for sale for arrears or rent, only that share or portion of such taluk shall be put up for sale in respect of which the arrear of rent may be due.

(5) In the advertisement for sale, notice of intention to exclude the share or portion of the Patni taluk from which no arrear of rent is due shall be given. The share or portion of the taluk sold together with the share or portion excluded from the sale, shall continue to constitute one integral taluk, the share or portion sold being charged with the separate portion of the rent assigned thereto.

(6) If in the case of a sale according to Sub-Sec. (3) the highest offer for the share or portion offered for sale is not equal to the amount of arrears of rent for which it was advertised for sale and the subsequent arrears of rent due thereon upon the date of sale, the sale shall be stopped and a notice that the entire patni taluk shall be put up for sale for such arrears shall be sent to all co-sharers of the tenant in such manner as may be prescribed by rules to be made by the Provincial Government.

On the twenty-five day from the service of notice on the co-sharers of the tenant, the entire patni taluk shall be put up for sale for the arrears unless any other co-sharers of the tenant shall within 15 days, have purchased the share or portion in arrear by paying the whole of the arrers of rent for which it was advertised for sale and the subsequent arrears of rent due thereon or the tenant pays up the whole of such arrears within the said 15 days :

Provided that, if a zamindar omits to avail himself of the means provided by this Regulation for realisation of any arrears of rent due in respect of a share or a portion of a Patni taluk, he shall not be entitled to put up for sale under this Regulation the entire Patni taluk for recovery of such arrears.

(7) If such purchase is completed, the office making the sale shall give a certificate of sale and delivery of possession, and if no such purchase is made within 15 days, the entire taluk shall be sold in the manner referred to in Sec.14 of the Bengal Land Revenue Sales Act, 1859.

15. Distribution of rent or partition of Patni taluk :— (Sec.6B). Sec.6B of the Patni Taluk Regulation lays down that the provisions of Sec.88 of the Bengal Tenancy Act, 1885, shall apply mutatis mutandis to the distribution of rent payable in respect of a Patni taluk with the substitution of the word "fifty rupees" for the word "two rupees" in the proviso (b) no sub-section (2) of the said section. Sec. 6B further prescribes that every co-sharer proprietor of a joint undividual patni taluk has the option either to institute a suit in a competent civil court for partition of such taluk or to partition such taluk according to the provisions of the Estates Partition Act, 1897 which Act shall apply mutatis mutandis (with necessary alteration) to such Partition.

***16. Sales of Patni Taluks (Sec.8) :—**The Patni Regulation allows the zamindar to bring the taluk to sale for non-payment of rent. The zamindar can apply through the collector the provisions for biennial sales for recovery of arrears of rent of a Patni taluk. These provisions have given the zamindars an easy and speedy means of realising the Patni rent.

First sale :-On the first day of Baishak every year the zamindar shall present a petition to the collector specifying the arrears due to him on account of the expired hear from the Patnidar. This petition in original shall be stuck up in some conspicuous part of the Collector's Kachary, with a notice that if the amount are not paid before the 1st of Jaistha, the tenures of the defaulters will be sold by public sale. Should, however, the 1st of Jaistha fall on a Sunday or a holiday, the next subsequent day, not a holiday, shall be selected instead.

A similar notice shall be stuck up at the Sadar Kachary of the zamindar himself and a copy or extract of such part of the notice shall be sent by him to be similarly published at the Kachari or at the principal town or village upon the land of the defaulter.

The zamindar shall be exclusively answerable for observance of the forms above prescribed, and the notice required to be sent into the mafassil shall be served by a single peon, who shall bring back the receipt of the defaulter

or of his manager for the same : or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot.

In case the people of the village objects or refuses to sign their names in attestation, the peon shall go to the Kachari of the nearest Munsiff, or if there is no Munsiff, to the nearest thana, and there make voluntary oath that he has published the notice duly and shall bring back a certificate, signed and sealed by the Munsiff or the officer in charge of the thana. The notice must be published before the 15th of Baisakh, otherwise the sale will be invalidated.

The zamindar shall also send by registered post to all defaulters a copy of or an extract from the notice containing a specification of any balances that may be due to him on account of the rent of the expired year and other particulars mentioned in this section.

Mid-year sale :—The zamindar can also send a similar petition to the collector on the 1st of Kartic specifying the arrears of rent due to himself from the patnidar upto the end of Aswin. The publication of the required notice must be, as in the case of 1st sale, properly done. The date for the full payment of the arrear shall be the last day of Kartic, and the sale shall take place on the 1st of Aghan. The patnidar is however more leniently dealt with in mid-year sale. He is allowed to stop the sale by paying before the date of the sale so much of the arrear as shall reduce it (including any intermediate demand for the month of Kartic) to less than $\frac{3}{4}$ of the total demand of the zamindar according to the Kistbandi, calculated from the commencement of the year to the last day fo Kartic. In the case of 1st year sale, the whole of the arrears must be paid by the defaulting Patnidar to stop the sale.

It is provided by Bengal Act XV of 1940 that the zamindar shall send by registered post to all defaulters a copy of, or an extract from, the notice containing a sepcification of any balance, that may be due to him on account of the rent of the current year upto the end of the month of Aswin and other particulars mentioned in this section.

Where the zamindar is satisfied that there is reason to believe that the default is keeping out of the way for the purpose of avoiding service of a notice or document under this section or that for any other reason the notice or document cannot be served in the ordinary way, he may cause it to be served by affixing the same in some conspicuous part of the house (if any) in which the defaulter is known to have last resided or carried on business or personally worked for gain. Service by this method shall be as effectual as if it had been made on the defaulter personally.

The name and address given in the notice of succession or transfer of a part taluk or a share or a portion thereof under section 17A shall be presumed to be the correct name and address of the person succeeding to, or transferee of such taluk until fresh notice under that section has been given on a subsequent date or until a change of the address has been notified to the zamindar by registered post not later than 1st day of Chaitra or the 1st day of Aswin immediately preceding the date of sale fixed under this section.

***17. Difference in Procedure of 1st sale and Mid-year sale :—** The procedure of Mid-year sale is the same as that of the first year sale except in the following respects :—

(1) The first sale is to be applied on the 1st of Baishak for the balances due for the expired year. The mid-year sale is to be applied for on the 1st of Kartic for the balances due for the current year upto the end of Aswin.

(2) The notice of sale which is to be published in the mafassil (a) in the case of first sale before the 15th Baisakh and (b) in the case of Mid-year sale before the 15th Kartic.

(3) In the case of 1st sale, the notice of sale must state that unless the whole of the amount claimed is paid before the 1st of Jeth, the tenure of the defaulting patnidar will, on that day, be sold. In the case of Mid-year sale, the notices must state that unless the whole of the amount claimed or so such of it, as shall reduce the arrear (including any intermediate demand for the month of Kartic) to less than $\frac{1}{4}$ of the balance due, be paid before the 1st Agrahayan, the tenure of the defaulter will , on that day, be sold.

(4) In the case of the first sale, on the date of the sale, the zamindar's man must attend with the accounts and also with the receipt or certificate of service of the mafassil notice. In the case of mid-year sale, he must attend with the receipt or certificate of service (as in the case of the first sale) and also with the Kistbandi of the defaulter in order that it may be seen whether the balance exceeds $\frac{1}{4}$ of the demand upto the date of sale.

18. How sale is conducted (Sec.9). Rules for bidding :—All sales of saleable tenures shall be made in public kachary. The land shall be sold to the highest bidder and everyone except the actual defaulter shall be free to bid. The zamindar or the under-tenant of the defaulter may bid, 15% of the purchase money shall be paid immediately the lot is knocked down and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder unless he is satisfied that the amount reqired to be depositedis in hand for the purpose or will be produced within 2 hours. If the 15 per cent is not paid within 2 hours of the sale, the lot shall be resold on the same day and if the remainder of the purchase money is not paid by noon of the 8th day, notice shall be given of re-sale on the following day by proclaiming the same by beat of drum through the bazar of the sadar station of the zila, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of 15 per cent already made and will be further answerable for any sum in which the proceeds of the 2nd sale may fall short of the antecedent one. The deficiency will be levied by the process for the execution of decress of the civil courts.

19. Forms to be observed on selling (Sec.10) : —At the time of the sale, the notice previously stuck up in the kachary shall be taken down, and the lots will be called successively in the order in which they are found in that notice. A person shall attend on the part of the zamindar with a statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt or certificate of the notice directed to be published in the mufassil; nor

shall any lot be put up to sale until the statement produced shall have been inspected and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate rubakari to be held upon each lot sold. In the case of mid-year sales, the kistbandi of the defaulter shall also be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand upto the date of sale. The sale shall not take place unless this is ascertained. the zamindar shall be exclusively responsible for the correctness and authenticity of the papers to be exhibited. The public officer making the sale shall not be answerable in any respect except for its fairness and publicity and for the observance of the rules prescribed for his guidance in this Regulation.

***20. Effect of Patni Sale (Sec.11).** (1) Tenures to be sold free of incumbrances by act of defaulter :—When a Patni Taluk is sold at public sale for arrears of rent, it is sold free of all incumbrances created by the defaulting patnidar. A Patni sale gives the purchaser what may be called a "parliamentary title". He is entitled to have possession of the tenure in the same state in which it stood at its creation by the zamindar free from all incumbrances created on it by the defaulting patnidar, his representatives or assignees, unless the right of making such incumbrances shall have expressly vested by a stipulation in the written engagement under which the tenure may have been held; and no transfer by sale, gift or otherwise, no mortgage or other limited assignment shall be permitted to bar the indefeasible right of the zamindar to hold the tenure of his creation answerable in the state in which he created it for the rent. The auction purchaser of a patni taluk sold for arrears of rent can thus avoid all incumbrances created by the defaulting Patnidar. But where an incumbrance was created before the creation of the patni tenure, the purchaser cannot avoid the incumbrance inasmuch as it was not the work of the defaulting patnidar. On the other hand if an incumbrance has been created on a patni tenure by the Patnidar with the express sanction of the zamindar, the purchaser of the tenure

when it is sold for arrears of rent is not entitled to avoid the incumbrance.

The power given to a purchaser at a patni sale to annul incumbrances and under-leases is not limited to the purchaser personally but is extended to his heirs and assigns. So not only the purchaser but his transferee also can avoid an incumbrance. One of the serveral purchasers cannot, however, annul an incumbrance or an under-lease. Where there are more than one purchaser, all the purchasers shall join together to avoid and annul incumbrances and under-tenures (22 Cal. 334). The incumbrance is not ipso facto avoided by a sale of the patni for arrears of rent but is only liable to be a voided at the option of the purchaser at such a sale. Such option may be exercised by the institution of a suit within the time allowed by law. The period of limitation for such a suit for avoiding incumbrances and under-tenures is 12 years from the date of confirmation of the sale.

(2) No under-lease to stand after sale :— On sale of a taluk for arrears, all leases originating with the holder of the former tenures, if it is a creation of middle interest between the resident cultivators and the late patnidar, must be considered to be cancelled. In other words all the rent receiving interests created by the defaulting patnidar and other subordinate and inferior interests are subject to annulment. The possessors of such interest must lose the right to hold possession of the land and to collect the rents of the raiyats.

The effect of sale of a patni taluk for arrears of rent is not to render all under leases ipso facto void without any further action on the part of the auction purchaser but merely to make them voidable at his option. So after such a sale an under-tenure subsists until it is annulled.

There may be various grades of subordinate interests under a patni, such as darpatni, sepatni, mukarari, dar-mukarari, semukarari and there may be incumbrances on each of these various grades of subordinate tenures. As the annulment of the higher interest annuls the subordinate interests, it is not necessary that the purchaser must find out

all grades of subordinate interests and annul each of them. Thus the annulment of a darpatni causes annulment of incumbrances created by the darpatnidar and the holders of interests subordinate to him which are carved out of the darpatni. (25 C. W. N. 106). The purchaser must annul the highest subordinate interest, and he may, if he chooses, avoid or affirm any tenure of inferior grade. When there is a chain of subordinate interests, the purchaser, if he chooses to exercise his power to annul any under-tenure at all, must begin with the highest subordinate interest and may proceed downwards as far as he chooses; but he cannot arbitrarily choose any under-tenure in the chain and annul it while allowing those above it to stand.

(3) Exception in favour of bona fide engagements with raiyats :-There are certain rights in land which are protected notwithstanding a sale under the Regulation. Khudkast raiyats or residents and hereditary cultivators are not liable to ejectment and bona fide engagements with them by the defaulter cannot be interfered with by a purchaser. But the rent of such a raiyat may be enhanced, if it can be proved in a regular suit that a higher rate was demandable from any raiyat at the date of the engagement. "Bona fide engagements" are those which are made in good faith without fraud, collusion or mala fides.

***21. Khudkast and Paikast Raiyats :**—The original division of the raiyats was into Khudkast and Paikast. The permanent tenants settled in the village were called Khudkast raiyats (khudown, and kast—cultivation) or raiyats cultivating the land of their own village or the village in which they resided as distinguished from Paikast raiyats (Pai-near, living near, non-resident and kast-cultivation) or raiyats who were residents of another or neighbouring village and cultivated land near their own village.

The khudkast raiyats had hereditary rights of occupancy but they could not transfer their rights. The Paikast raiyats had no such rights but were mere tenants-at-will.

The khudkast raiyats were the original settlers in the village with their decendants and the immigrants who had

permanently settled in the village and they were admitted to share the same previleges. The rights of khudkast raiyats were regulated by custom and they had a hereditary right to cultivate the lands of the village. They could not be ousted while they continued to hold their holdings and pay the customary revenue but on the other hand they could not originally transfer their holdings without the consent of the community.

***22. Reasons for allowing under-tanants means of staying sale (Sec.13) :**—(1) On a sale of a Patni taluk under this Regulation the inferior taluks held under the Patnidar are laible to be cancelled by the purchaser. This injury may be brought on the under-tenures by the patnidar purposely withholding the rent due from him to the zamindar. To provide against such contingency the under-tenants have been given the right of saving their tenures from ruin that must attend a Patni sale.

(2) How the under tenants may stay sale :—Any darpatnidar or any other under-tenure holder, whether his name is registered in the zamindar's office or not, may protect the Patni from sale by paying the amount of arrears into the collectorate at any time before the sale. (18 C. W. N. 747). But a resident and hereditary cultivator cannot stay a sale under this Regulation because his interest is protected. A tender to stay a sale under this section must be of the whole of the zamindar's demand and must be unconditional.

(3) Procedure in case of amount lodged being rent due from under-tenants :—If the amount lodged is rent due by the inferior talukdar to the defaulting patnidar, the amount shall be carried to the account of the tenant or tenants lodging it and will be deducted from any claim of rent that may be pending or brought forward against him or them by the proprietor of the advertised tenure. In other words if the under-tenant is himself in arrear the amount deposited by him would go towards satisfaction of his rent.

(4) Procedure in case of amount lodged being advance from private funds :—If the under-tenant is not in arrear and has already paid his full rent, the amount deposited in considered

to be an advance from private funds for which a statutory lien arises in favour of the depositor in order to recover the amount advanced from the profits. The lien created under this clause is tantamount to an usufructuary mortgage. The under-tenure holder who makes the deposit is entitled to remain in possession only so long as the full amount advanced with interest, is not realised from the usufruct of the tenure. The lien is extinguished as soon as the debt is satisfied from the profits of the tenure and the moment the lien is extinguished, the defaulter becomes entitled to recover possession. No order of the Collector is necessary in this behalf, nor is a regular suit essential to alter the legal position of the parties (7 C.L. J. 604). If after his debt has been satisfied, he does continue in occupation, he does so at his peril and renders himself liable on account for the profits received in excess.

If the defaulter desires to recover his tenure from the hands of the person or persons, who, by making the advance, have acquired such an interest in the taluk and entered in possession, he shall not be entitled to do so except upon payment of the entire sum advanced with interest at the rate of 12 per cent per annum upto the date of possession, or upon exhibiting proof in a regular suit that the full amount advanced with interest has been realised from the usufruct of the tenure.

(5) Right of person making payment to prevent sale :— It is provided by Bengal Act XV of 1940 that when any person, whose interest are affected by the sale of a patni taluk or a share or a portion thereof pays to the collector the amount requisite to prevent the sale, he shall have the following rights :—

(a) the amount so paid by him shall be regarded as a loan bearing interest at 12 per cent per annum and secured by a mortgage of the taluk or a share or a portion thereof to him;

(b) his mortgage shall take priority of every other charge on the taluk or share or a portion thereof other than a charge for arrears of rent; and

(c) he shall be entitled to possession of the taluk or a share or a portion thereof as mortgagee of the talukdar, and retain

possession of it as such until the debt, with the interest due thereon, has been discharged. This is an additional remedy and would not affect any other remedy which is available to any such person.

(6) Deposit by inferior talukdar :—It is also provided by Bengal Act XV of 1940, that "when a patni taluk or a share or a portion thereof is advertised for sale under this Regulation, for arrears of rent owing to the default of a superior talukdar and an inferior talukdar pays money to the collector in order to prevent the sale, such inferior talukdar may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached." This procedure of payment will ultimately make the defaulter to pay his dues. Any amount paid by an inferior talukdar towards arrears of rent defaulted by a superior talukdar, shall be adjusted and deducted from his rent payable to his immediate landlord.

23. Sale not to be stayed unless arrears claimed be lodged; but suit to lie for its reversal. (Sec.14) :— Under Sec.14 of this Regulation, the sale of a patnitaluk will not be stayed, unless the arrears claimed by a zamindar is lodged on or before the day fixed for the sale of the tenure. To stay a sale, one must pay the whole of the zamindar's rent unconditionally. But a suit will lie for the reversal of the sale on the ground that there was no balance due. The purchaser shall be made a party in such suits and upon decree passing for reversal of the sale, the court shall indemnify him against all loss. The amendment of 1940 further provides that the right of the zamindar to make the sale shall not be stopped by any party, nor shall the sale be reversed solely, on the ground that a notice or other document mentioned in sec.8 was not served personally on the defaulters or any of them. A tender to stay a sale under this Regulation must be of the whole of the zamindar's demand and without any condition.

An unregistered transferee of a patni tenure can use to set aside a sale held under this Regulation. although a zamindar is not bound to recognise the unregistered tenant, still he may be treated as a person desirous of contesting the right of the zamindar to make the sale; and so it is open to him to sue the zamindar on account of any illegal act by which his rights may have been affected in respect of the tenure (12 Cal. 622 : 15 Cal. 345).

(2) Summary investigation may be applied for by defaulter, but sale not to be stayed without deposit :—A patnidar may apply for a summary investigation at any time within the period of notice (i.e. on or before 1st Jaistha or 1st Aghan, as the case may be) in case where he may contest the zamindar's demand of any arrear. The collector is not competent to postpone the sale and to decide the summary suit after date fixed for sale. As no award had been given on the day of sale and the case will still pending, the collector had no option but to proceed with the sale on the zamindar insisting on the demand and on the responsibility of the zamindar. If the collector was of opinion that the sale could not proceed because the zamindar did not file the patnidar's kabuliat as required under this clause, the case ought to have been struck off on the day of sale.

The sale shall not be stayed unless the amount claimed is lodged by the talukdar contesting the demand. If the deposit is not made, the sale will be held and the only remedy open to a patnidar is to bring a suit for a reversal of the sale and for damages under this section or to apply under Sec.14A for reversal of the sale.

It is provided by Bengal Act. XV of 1940 that any talukdar shall be entitled to stay the sale of his taluk by paying the amount in arrears to the officer conducting the sale before the sale actually takes place.

***24. Procedure for setting aside sale (Sec.14A) :—**This Section has been inserted by Act IV of 1933 which came into operation on the 18th May, 1933. This Section gives the right of setting aside the patni sale on conditions analogous to those contained in Sec. 174 B.T. Act and Or. 21. R. 89, C. P. C.

Prior to the enactment of this Section a Patni-sale could be set aside by a regular suit brought under Section 14 of the Regulation. the Patni Regulation as originally enacted contained no provision which would enable a defaulting patnidar or other interested persons to have the sale set aside by depositing the arrears of rent even if the property had been sold at an inadequate price. The Patnidar had to suffer this loss as a necessary evil. It was to redress this evil that the present section was added to the Patni Regulation and as it is a remedial provision, it ought to be liberally construed. (61 Cal. 903). This Section is retrospective in operation and applies to all sales held under the Regulation whether before or after it came into operation.

This Section gives the right to all persons holding an interest in the taluk to have a patni-sale set aside by depositing the amount of demand of the zamindar together with interest and all costs incurred by the zamindar in bringing the tenure to sale and an additional amount of one per cent of the purchase money for payment to Government and a compensation of 5 per cent which, in no case, will be less than a rupee, for payment to the purchaser. The application for setting aside the sale is to be made to the collector together with the deposit within 30 days from the date of sale. the right is not restricted to the defaulting patnidar alone, but is extended to all persons interested in the Patni, viz. talukdars or tenure holders of the second decree, persons holding any interest acquired before the sale and mortgagees of such patni. If, however, any suit has been instituted under Sec.14 of the Regulation to set aside the sale, it must be withdrawn before an application under this section can be entertained. Under this section the interest is payable upto the date of deposit. The deposit must be made in all cases within 30 days from the date of the sale. In case of re-sale, the period of 30 days shall be computed from the date of the original sale, and not from the date of re-sale. The court is not competent to extend the time for the deposit. If the court is closed on the last of the 30 days, the deposit may be made on the next day the court re-opens.

On receipt of an application to set aside the sale, the collector shall cause a notice on the zamindar and the auction purchaser fixing a date for hearing the same.

If no objection is made by the zamindar or the auction purchaser and the deposit has been made within 30 days from the date of the sale, the collector shall allow the application and make an order setting aside the sale and shall pass order for the disposal of the money deposited by the applicant and the refund of the purchase money.

If any objection is made by the zamindar or auction purchaser, the collection shall refer the application together with the objection to the civil court having jurisdiction. The civil court shall decide whether the applicant is entitled under this section to have the sale set-aside, and shall either dismiss the application or make an order setting aside the sale, and shall pass such further orders regarding the disposal of the money deposited by the applicant, the refund of the purchase money, the payment of cost or any other matter arising out of the application as it thinks fit.

It is provided by Bengal Act XV of 1940 that the provisions of this section shall apply to the setting aside of the sale of a share or portion of a patni taluk whenever a separate account shall have been ordered to be opened in respect of such share or portion under section 6A.

25. Delivery of possession to purchaser. (Sec.15) :— (1) On the expiry of 30 days from the date of any sale made under this Regulation or if there has been a re-sale within 30 days of the original sale, if the purchase money has been paid by the purchaser, and if no application under section 14-A to set aside the sale is pending, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kachary of the zamindar, and upon furnishing security, if required, to the extent of half the jama or annual rent, he shall receive the usual amaldastack or order for possession together with the notice to the raiyats and others to attend and pay their rents henceforward to him. (After 1940 no security is required)

The zamindar shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachary; and if he in any manner delays the transfer in his office, or refuses to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the court, and he shall be put in possession, of the lands by means of the nazir, in the same manner as possession is obtained under a decree of court :

Provided, however, that if the delay be on account of the zamindar's contesting the sufficiency of the security tendered, the rule contained in Sec. 6 of this Regulation shall be observed.

(2) Procedure in case of opposition to purchaser :—When a new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenure or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition or to interfere with the collections of the new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the civil court for the aid of public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal of the court and signature of the Judge declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar, acquired the entire rights and privileges attaching to the tenure of the late talukdar, in the state in which it was originally derived by him from the zamindar, he alone will be recognised as entitled to make the zamindari collections in the mafassil, and no payments made to any other individual will, on any account, be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

(3) Procedure in case of continued opposition :—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officer and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

Note :— Prior to the amendment made by Act. IV of 1933, a sale held under the Patni Regulation did not require to be confirmed. It became final and conclusive when the balance of the purchase money was paid under action 9 (31 C. L. J. 484). But since the amendment the confirmation is to be made on the expiry of 30 days from the date of sale. As a result of the amendment, the sale shall not, by the deposit of the purchase money on the 8th day, be final and conclusive and ipso facto confirmed, but would require to be confirmed on the expiry of 30 days if no applicaiton under section 14-A to set aside the sale is filed and pending for disposal (Bhowmik, Patni Sale Law, 199).

After confirmation of the sale, the purchaser shall receive a certificate from the officer conducting the sale. On receipt of it he will go to the kachari of the zamindar to procure a transfer of the property in his name and on payment of security if required or annual rent he will receive the order for possession together with the notice to the raiyats and others to pay their rents to him. In case of delay to transfer or refusal to give the orders for possession, the purchaser shall be entitled to apply to the court and he shall be given possession of the property by the nazir in the same manner as possession is obtained under a decree of court.

Cl. (2) provides that if the late incumbent or the holder of the tenure or assignements attempts to offer opposition or to interfere with the collections from the lands, the purchaser can apply immediately to the Civil Court for aid of public officers in obtaining possession. On his application a proclamation will be issued under the seal of the court and

signature of the judge declaring that the purchaser acquired the entire rights and privileges of the late talukdar. He will get the taluk in the state in which it was originally derived by the defaulter from the zamindar. He is entitled to make collections from the tenants and no payments made to any other individual will be credited to the raiyats or others.

Cl. (3) provides that in case of further opposition after the proclamation is issued or if there is reason to apprehend a breach of the peace, the aid of police officers and public officers shall be given to him on presenting a written application for the same. In the event of affray or breach of the peace, the entire responsibility shall rest with the party opposing the lawful attempts of the purchaser to assume his rights. The purchaser when resisted in obtaining delivery of possession is to apply to the District Judge and not to the Collector. (B. B. Mitra-Land & Water, 132).

26. Rules for disposal of sale proceeds. (Sec.17) :—(1) The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation :–

(2) I. P. C. to be carried to the account of Govt :—One per cent shall be first deducted from the net proceeds realised, and shall be carried to the account of Provincial Government for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of the Regulation.

(3) Payment to zamindar :—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluk to sale) to the zamindar or other person to whom the same may be due :

Provided, however, the no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the comencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the zamindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become, in fact, mere personal debts of the

individual talukdar, and must be recovered in the same way as other debts by a regular suit.

The Provincial Government may prescribe by rules the amount of charges incurred by the zamindar in bringing a taluk to sale under this Regulation.

(4) Disposal of remainder :—Any excess that may remain after satisfying the demand of the zamindar, in the manner above described, shall be forthwith sent, by the officer conducting the sale to the treasury of the collector or Assistant Collector of the district to be there held in deposit to answer the claims of the talukdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing taluk sold or any part of it.

(5) Under-tenant free to prosecute for price of their interest or compensation :—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the court shall, on investigation, consider the plaintiff's claim to be an equitable one, the court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

In many claims, payments to be made proportionately :— If there be more claimants than one, payments shall not be made from the deposit until the whole of the claims be settled; and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the reminder stand as a personal debt against the defaulter, to be realised from him by the usual process for the execution of decrees.

(6) Suit not to lie if the under-tenant be himself in arrear at the time of sale :—Provided, however, that no talukdar of the second degree, or other possessor of an assigned interest

upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluk, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

(7) In case of no claim in 2 months or only partial claims, defaulter to receive the excess unclaimed :—Should no claims upon the purchase money of a taluk sold as above be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate, under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates, under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates the amount shall be paid severally to their receipts by the Collector.

(8) Substitution of Government securities for cash in deposit :—(1) It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day.

(2) On the application of any of the parties to any suit relating to the sale of a taluk or the disposal of purchase money of the taluk sold, the civil court may direct that any sum held in deposit under the fourth clause of this section shall be invested pending the further orders of the Court, and

thereupon the Collector shall remit the said sum to the Court for investment.

Notes :—This section deals with the rules for disposal of sale proceeds.

Cl.(2) provides that one per cent shall be first deducted from the net proceeds and shall be carried to the account of the Government for the purpose of meeting the expense of any extra-establishments for carrying into effect the provisions of this Regulation.

Cl. (3) provides that the balances due for a period earlier than the current year or the year immediately expired are not to be included in the demands to be satisfied from the sale-proceeds. But the antecedent balances being mere personal debts must be recovered in the same way as other debts by a regular suit in the civil court.

There is no conflict between Sec.65 of the B. T. Act and Sec.17 of the Patni Regulation and there is no difference between the patni taluks and other tenures in respect of the applicability of Sec.65 B. T. Act to them. In 19 C.W.N. 1001; 20 C. L. J. I. it has been held that the charge, which the zamindar has under Sec. 65 B. T. Act on a patni tenure for former balances of rent, is not destroyed but is transferred to the surplus sale proceeds, even where the tenure has been sold under the Patni Regulation for the realisation of arrears due for the year immediately expired or for the current year, as the case may be, especially where the zamindar has already obtained a decree for such former balances of rent proper to the sale. Therefore, where before a patni is sold under the Regulation, both the zamindar and the mortgagee of the tenure have recovered decrees, the former for antecedent arrears and the latter on his mortgage, the charge in favour of the zamindar in respect of arrears of rent, being a first charge under section 65, B.T. Act, on the surplus sale-proceeds, would have preference over the charge thereon in respect of the mortgage dues.

Cl.(4) provides that any excess that remains after satisfying the demand of the zamindar, shall be sent

forthwith by the officer conducting the sale to the treasury of the Collector or Assistant Collector. The excess will remain there in deposit to answer the claims of the talukdars of the 2nd degree or of others. A sepatnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under this Regulation. This clause mentions a talukdar of second degree but does not mention the talukdar of the 3rd degree (sepatnidar). The rights of mortgagee of patni taluks are not dealt with by this Regulation. But the surplus sale-proceeds should be considered to represent the mortgaged property and a mortgagee will be entitled to be paid from the sale-proceeds in the first instance. (29 Cal. 241).

Cl. (5) provides that the under-tenant can institute regular suit within 2 months from the date of sale for claims to the price of his interest or for compensation for the loss sustained by him in consequence of the sale. If the court considers the plaintiff's claim to be an equitable one, it will award to the plaintiff either the price originally paid by him or the value of the interest or any other amount that is just and equitable. If there are more claimants than one, no payments will be made from the deposit unless the claims of all are settled. If the value assessed exceeds the amount in deposit, it shall be divided to the claimants proportionately and the remainder will stand as the personal debt of the defaulter and it will be realised from him by the usual process by the execution of decrees.

Cl.(6) provides that the negligence on the part of a darpatnidar in not fully paying the amount due by him may have contributed to the non-payment by the patnidar of the amount due by him to the zamindar. A suit will not lie for compensation for the loss of the tenure by sale of the patni taluk, if he himself is in arrear at the time of sale of the superior taluk (i.e. patni taluk).

Cl. (7) provides that in case there is no claim or in case of partial claims from the under-tenants or assignees within 2 months from the date of sale, the defaulting patnidar will get the unclaimed excess remained in deposit with the Collector.

Cl. (8) provides that any party interested in the deposit may substitute Government securities bearing interest for the whole amount or part of it that was in deposit. Cl. 8(2) has been inserted in 1936 and his sub-clause provides that on the application of any of the parties to any suit relating to the sale of a taluk or the disposal of purchase money of the taluk, the civil court may direct that any sum in deposit shall be invested pending further orders of the Court and thereupon the Collector shall remit the sum to the Court for investment.

27. Registration of names of successors to and transferees of, patni taluks (Sec.17 A) :—When succession to or transfer by sale, gift or otherwise of a patni taluk takes place, or in case of such succession or transfer taking place before the commencement of the Bengal Patni Taluks Regulation (Amendment) Act,1940, within one year from the date of such commencement, the person succeeding or the transferee, as the case may be, shall give notice of the succession or transfer and of his name and address to the Collector in such form, as may be prescribed by the provincial Government.

He shall also pay to the Collector such fee for the notice on the zamindar as may be specified by the Government. The Collector shall cause the notice to be served on the zamindar named in the notice or his common agent, if any, in such manner as may be prescribed by rules to be made by the Government :

Provided that, where at the instance of the person succeeding, mutation is made in the rent roll of the zamindar within six months of the succession, the person succeeding shall not be required to give notice under this section.

A person becoming entitled to a Patni Taluk by succession or by transfer shall not be entitled to receive by registered post the notices referred to in clauses 2 and 3 of Sec. 8, unless the duties imposed upon him by this section have been performed.

In this section the words 'person succeeding', 'transferee', 'purchaser' and 'the person becoming entitled to a patni taluk by succession or by transfer' include the successors in interest of such persons, but do not include the zamindar where he is

the sole zamindar. This section shall apply to the transfer or succession to a share or a portion in a patni taluk.

Note :—This section has been inserted by Bengal act XV of 1940. Prior to this amendment, though alienation and transfers were recognised, the name of the transferees were not generally entered in the sherista of the zamindar and as a result the tenure was sold in the name of the original holder and the real owners had to suffer. Sometimes zamindars also refused to recognise the transferees. The amendment, therefore, provides a sure mode of registration of transferee's name in the sherista of the zamindar on payment of transfer fee at the time of registration of the transfer.

This Section provides for registration of names of successors to, and transferees of patni taluks. By virtue of this section, a successor to a patni taluk by purchase, gift or otherwise shall give notice of the succession or transfer and of his name and address to the Collector for registration of his name in the zamindar's sherista. The Collector shall direct the zamindar concerned by due notice to effect the necessary mutation as regards the change in the succession to the patni taluk. This section imposes an obligation on the successor or the transferee to a patni taluk to send notice of succession or transfer to the Collector.

This section shall apply also to the transfer or succession to a share or a portion in a patni taluk. The omission on the part of the successor or the transferee to give notice of succession or transfer will not entitle him to receive notice of sale of the patni taluk as provided for in clauses 2 and 3 of Sec.8 of the this Regulation.

CHAPTER —VIII

THE BENGAL LAND REVENUE SALES ACT.

(Act. XI of 1859)

Scope of the Act :—The Revenue Sales Act of 1859 is a complete code in itself. Consequently, the general provisions of the Limitation Act has no application to this Act. Thus a suit brought by a minor to set aside a revenue-sale more than one year after the confirmation of sale was held to be time-barred, notwithstanding the provisions of section 7 of the Limitation Act.

***Objects of Act XI of 1859 (Preamble) :**—The following are the objects for which this Act was passed : —

(1) To afford reasonable security to persons who have liens upon estates, and who pay the money necessary to protect such estates from sale for arrears of revenue. This Act is introduced to protect the interest of persons in the estate such as mortgagee. When an estate is mortaged and afterwards sold for arrears of revenue, the creditor loses his security as the sale clears away incumbrances. Before the enactment of this Act, he was absolutely without a remedy if a zamindar chose to let the estate fall into arrear for the purpose of bringing it to sale. The necessary remedy is afforded by allowing the creditor to deposit the arrear of revenue and to save the estate from sale. If he can prove afterwards before a competent court, that this deposit is necessary in order to protect any lien he had on the estate, a share, or a part thereof, the amount so deposited is to be added to the amount of the original lien. (Section 9).

(2) To afford sharers in estates, who duly pay their proportion of the revenue, easy means of protecting their estates from sale by reason of the default of their co-shares. The system of joint ownership produced hardship among the co-sharers. When one of several co-sharers of an estate failed to pay his quota of the revenue and so brought the estate into arrear, the other co-sharers had no alternative but to pay his quota out of their own pockets, if they would avoid the loss of

their own shares, which would be the result of a sale. To obviate this hardship a recorded sharer of a joint estate, held in common tenancy or whose share consists of a specific portion of the land, may apply after the introduction of this Act to the Collector to the allowed to pay his share of the Government revenue separately (Read Sections 10-14 for detailed study).

(3) To afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates by reason of the neglect of fraud of their agents. The recorded proprietors or co-partners of estates are empowered to deposit with the Collector money or Government securities endorsed and made payable to the order of the Collector, at the same time signing an agreement pledging the same to Government by way of security for the revenue of the entire estate and authorising the Collector to apply them to the payment of any revenue that may become due. In case of arrear, the Collector is to apply to its payment the money and any interest due upon the securities and if a balance then remains, he is to sell the securities and apply the proceeds to its discharge. So long as funds are in hand to cover any arrears that may accrue, the estate is exempt from sale. Money and security so deposited are exempt from attachment otherwise than in execution of a decree of the Civil Court (Section 15).

(4) To provide for the voluntary registration of dependent taluks existing at the time of the permanent settlement.

(5) To protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures by the sale of the superior estate for arrears of public revenue; and to give absolute security to such tenures by special registry, when shown to be held at a rent sufficient for security of the revenue.

1. (Repealed by the Repeating Act, XIV of 1870).

***2. Arrears of Revenue :—**(1) If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kist-bandi of any mahal have been

regulated, be unpaid on the first of the following month of such era the sum so remaining unpaid shall be considered an arrear of revenue.

(2) As arrear of road cess or public works cess levied under the Cess Act, 1880, or of primary education cess levied under the Bengal (Rural) Primary Education Act, 1930, which is payable to the Collector in respect of any estate shall, notwithstanding anything contained in those Acts, be deemed to be an arrear of revenue :

Provided that the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions in those Acts for the realisation of such arrears :

Provided further that the provisions of this sub-section shall not apply to any arrears of any such cess other than the arrears due in respect of the last instalment or, where the annual demand of any such cess is payable in one annual payment, in respect of the last year.

Note :—The term kist is an instalment of revenue of any month of the era according to which the settlement and kist-bandi of any mahal have been regulated. The original and legal significance of the kist is often lost sight of and the word kist is loosely applied to denote either the latest day of payment or the arrears of revenue. But, strictly speaking, there is a clear distinction between a kist of revenue and arrears of revenue as well as the latest day for the payment of arrears as contemplated in Section 2 and 3 of the Act. It will, therefore, be observed that the liability of an estate to sale under the Act depends on three dates. The first is the date on which the instalment of revenue is payable under the terms of the settlement. If it is not paid on this date under Section 2 of the Act, it does not become an arrear of revenue until the first of the following month which is the second date and though the unpaid sum has become an arrear of revenue, the estate is not liable to the sale under the Act, unless this arrear of revenue remains unpaid on the latest day of payment as fixed by the Board of Revenue under Section 3 of the Act. This is the third date. The Board of Revenue has fixed the latest dates of payment of revenue under Section 3 of the Act XI of 1859.

These dates are commonly known as the June kist, the september kist, the January kist and the March kist. These dates, however, are not the kist dates of the original settlement as contemplated by Section 2 of the Act, but only the latest dates of payment as fixed by the Board of Revenue under Section 3 of the Act. Where there is nothing to show what were the original kist-bandi dates under Section 2 of the Act, the kist dates in June, September, January and March the latest dates fixed by the Board of Revenue are popularly known as kist dates (22 C. W. N. 769).

When an amount, tendered by the proprietor as the January kist, was received and acknowledged by The Treasury Officer as paid for that kist, but afterwards that officer credited the amount against arrears due in respect of an earlier kist, and the estate was then put up to sale on account of arrears in respect of January kist, the sale is invalid (38 Cal. 537 P. C.).

Cl. 2 of Section 2 has been inserted by the Bengal Land Revenue Sales (East Bengal Amendment) Act, 1949. It is provided that an arrear of cess whether road cess or public works cess or primary education cess shall be deemed to be an arrear of revenue. This sub-section will apply to the arrears due in respect of the last instalment or where the annual demand of any such cess is payable in one annual payment, in respect of the last year. A mahal can be put to sale on account of arrears of cess only when the arrears due are in respect of the last instalment (12 D. L. R. 208 and 209). Where the sale took place on account of arrears of cess of March kist of 1950, on 26-6-50, then under the proviso to Sub-Section (2) there cannot be any sale for arrears of cess due in March, 1950 and the sale held for such an arrear by the Collector was without jurisdiction and the sale is liable to be set aside and declared void (12 D. L. R. 386 and 291).

Once the Collector takes any step for the sale of an estate on the basis of this amended section, it cannot be held that he is bound to deem the road cess as revenue for all purposes and at all stages. This Sub-Section enables the Collector to deem arrears of cess as arrears of revenue, but from that the

converse does not follow. It cannot be said that because the Collector is allowed to deem arrears of cess as arrears of revenue for the purpose of realisation of cess he can also deem arrears of revenue as arrears of cess or deem any revenue as cess and, therefore, when a party falls into arrears of cess, the Collector will take the amount lying under the head "Cess". Where therefore, a proprietor of an estate falls into arrears of cess, the Collector cannot take the amount lying under the head "revenue" as really an amount lying under the head "cess". Even in case of arrears of revenue, it is not open to the Collector to appropriate payment in any way he likes. (9 D. L. R. 182).

***3. Latest day of Payment :**—The Board of Revenue shall determine upon what dates all arrears of revenue and all demands, which are directed to be realised in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment, the estates in arrear in those districts except as hereinafter provided shall be sold at public auction to the highest bidder.

The Board of Revenue shall give notice of the dates so fixed in the official gazette and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the Collector or other officer duly authorised to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate as the case may be) and Munsifs and at every thana station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described to be issued at least three months before the close of official year preceeding that in which the new date is, or dates are, to take effect.

Note :—This section provides that in default of payment of Revenue, "the estates in arrear" shall be sold at public auction to the highest bidder. An estate is liable for sale only after the latest day for the payment of arrears. A sale held before such date fixed by the Board of Revenue (or in the absence of an arrear of revenue) is without jurisdiction and invalid and will be annulled (55 C. L. J. 62 P. C; 12 D. L. R. 198). Government

revenue is not in arrear until the first of the following month of the era and the Collector has no power to put up the estate for sale until the expiry of the latest day fixed by the Board for payment after the estate is in arrear.

The latest day of payment as in Section 3, is the turning point and all the machinery of the Act for sales seems to hinge on it. (7 C. W. N. 377). When the latest day for the payment of revenue falls on a Sunday or a holiday, being a day on which the Collector's Office is authorised to be closed, the first opening day after such Sunday or holiday is to be taken as the latest day.

The revenue must reach the Collectorate on the last day of payment; if the revenue is tendered at the post-office by money order before the last day of payment but it does not reach the Collector on the last day, the estate is liable to be sold (Baikantha V. Gunga, 4 C. W. N. 103). If there is no arrear of revenue due at the time, the sale of the estate is invalid. Thus, if by reason of erroneous debit entries in the collector's books, the estate is sold when there are no arrears, the sale is unauthorised and a civil court has jurisdiction to declare the sale void (Balkishen V. Simpson. 25 Cal. 833 P. C.).

If revenue is payable on the land only then upon a sale for arrears of revenue, the land only will pass, but not the buildings on the land (Narayan V. Jatindra, 54 Cal. 669 P. C.: 31 C. W. N. 965).

4. (Repealed by the Repealing and Amending Act XII of 1891).

5. Proviso as to certain description of arrears :—Provided always that no estate, and no share or interest in any estate, shall be sold for recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification, in the language of the district, specifying the nature and amount of the arrears or demand, and the latest date on which payment thereof shall be received, shall have been affixed, for a period of not less than 15 clear days preceding the date fixed for payment according to Section 3 of this Act, in the officer of the Collector, or other officer duly authorised to hold sales under this Act, in the court of the judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and Police-thana of the division in which the estate or share of an estate to which the notification relates is situated, or, if the estate or share of an estate be situated within the jurisdiction of more than one Munsif's Court or Police-thana, in some one or more of such Courts or thanas, and also at the kachary of the Malguzar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First :—Arrears other than those of the current year, or of the year immediately preceding.

Secondly :—Arrears due on account of estates other than that to be sold.

Thirdly :—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly :—Arrears due on account of takavi, pulbandi or other demands nor being land-revenue or cesses but recoverable by the same process as arrears of land revenue.

Note :—The notification under this section is not a notice for the sale of an estate for arrears of revenue on a specified day or at a specified hour nor does it invite bidders. It is simply a public call on the debtor to pay his debt by a fixed date. The notification is to be fixed at least 15 days before the latest day of payment. The issue of a notification under this section is imperative and its non-service is a material irregularity for which the sale for arrears may be set aside. (17 Cal. 398).

***Takavi** :—means advances of money made by Government to zamindars for improvement of their lands.

***Pulbandi** :—means money advanced for keeping bridges, embankments, etc. in repairs.

***6. Notification of sale to be issued and no tender after latest day of payment to stop the sale :—**The Collector or other officer duly authorised to hold sale under this Act shall, as

soon as possible after the latest day of payment fixed in the manner prescribed in Section 3 of this Act, issue notification in the language of the district to be affixed in his own office, and in the Court of the Judge of the district specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than 30 clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid. If the Government revenue of any estate or share of an estate to be sold exceed the sum of Rs.500 a notification of the sale of such estate or share of an estate shall be published in the official Gazette. The Collector or other officer duly authorised to hold sale shall also issue notice of sale by registered post in the name of the recorded proprietors of the estate, and in case their number be more than five, in the name of at least five of the biggest recorded share-holders informing them of the particulars of sale. Such notice shall be issued simultaneously with, or as soon as may be after, the issue of the notification referred to above. If the sale does not take place the cost of such registered notices shall be payable by the defaulters within 15 days of the date on which the sale was to take place and if it is not paid within that period, it shall be realised from the defaulters by any process authorised for realising an arrear of public revenue. No sale shall take place until the officer conducting the sale has satisfied himself that the notification of sale has been duly published and the notices of sale have been sent to proprietors by registered post but the omission to serve such notice on any proprietor or any defect in the service of any such notice shall not by itself be a ground for the annulment of a sale under this Act. Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to auction by and in the presence of the Collector or officer as aforesaid, and shall be sold to the higher bidder. And no payment or tender of payment after the sunset of the latest day shall bar or interfere with the sale, either at the time of sale, or after its conclusion.

Note :—The object of this Section is to give reasonable publicity to the sale. This section requires that the Collector shall issue notification, after the latest day of payment, (1) specifying the estates or shares of estates which will be sold and (2) the day on which the sale will commence. If the notification fulfils both these conditions it is a legal notification even if it departs in other respects from the details prescribed by executive authority. Sales should not, therefore, be set aside on the ground that executive instructions have not been complied with though Commissioners should check any tendency to laxity in this respect. The specification should be such as to inform intending purchasers the precise property that is to be sold and to ensure thereby a reasonable competition. A sale for arrears of revenue is not invalid if it does not contain the names of all the recorded proprietors, or if there is an erroneous entry of the name of a proprietor in the notice (9 Col. 591). But the notification must contain sufficient specification of the property so as to inform intending purchasers what is the precise property to be sold and the sale is liable to be set aside if owing to insufficient description the property was sold at an inadequate price (42 Cal. 897 P. C. ; 6 C. W. N. 526; 32 Cal. 542). Where the description in the notice under section 6 was such as to mislead intending purchasers as they could not know definitely what was going to be sold, and this misdescription prevented a sufficient number of intending purchasers from bidding at the sale and caused sustaintial injury to the plaintiff, the sale would be set aside (1 D. L. R. 59). Non-issue of notice under section 6 makes the sale liable to be set aside (9 D. L. R. 112).

The notification fixing the date of sale must be affixed at least 30 days before the day fixed therein for holding the sale. The Collector has no power to alter the date of sale (9 Cal. 271). Where the notification required by this Section has not been affixed 30 days before the date of sale, the Collector ceases to have any jurisdiction to put up the property to sale.

If the revenue of any estate or share of an estate to be sold exceed Rs. 500, a notification of the sale shall be published in

the official Gazette. Under the amended section the Collec
shall also issue notice of sale by registered post in the name
the recorded proprietors. Where the number of proprietors
large, the notice may be issued to only 5 biggest share-holders
The cost of such notice may be realised from the defaulter
the sale does not take place.

Where the arrears of revenue has not been paid within th
latest day fixed for payment, no payment or tender
payment made after sunset of such date can bar or interfer
with the sale either at the time of the sale or after it
conclusion. Such a payment does not entitle the proprietors
claim as a matter of right that the liability of the estate to b
put up to auction has terminated.

7. Notice to raiyats, etc. :—Whenever an estate or share o
an estate is notified for sale as provided by Section 6 of this
Act, the Collector or other officer as aforesaid shall affix
proclamation in the language of the district, (1) in his own
office and as soon thereafter as may be, (2) in the Munsif's
Court and (3) police-thanas within which the estate or share
of an estate or any part of it, is situated, and also (4) at the
Kachari of the malguzar or the owner of the estate or share of
an estate or at some conspicuous place upon the estate or
share of an estate, forbidding the raiyats and under-tenants to
pay to the defaulting proprietor any rent which has fallen due
after the day fixed for the last day of payment, on pain of not
being entitled to credit in their accounts with the purchaser of
any sums so paid.

Note :—The object of issuing a notice under this section is
firstly to prevent the tenants from paying rent to the
defaulting proprietor. The idea is to protect the interest of
both the tenants and the purchaser at the revenue sale. The
auction purchaser gets the certificate of title given under
Section 28 and his title takes effect from the day after the last
day of payment. Therefore it is essential that as soon as the
default is made, the raiyats and the under-tenants should be
apprised that the defaulting proprietor has no claim to any
rent that accrue after the default has been made (2 L. J. 325).

Omission to publish notice under this Section does not vitiate a sale. (13 C. L. J. 1 ; 30 Cal. 38; 34 Cal. 381).

8. Claims of defaulter against Government not to invalidate sale :—No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held, by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that the money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone, and within dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in Section 15 of this Act, the Collector shall have neglected or refused on insufficient, grounds, to transfer it in payment of the arrear of revenue due.

Note :—Possession by Collector of money, belonging to the defaulter, not indisputably placed to his credit cannot save the estate from being sold. (25 Cal. 833). A deposit in the Collectorate to the credit of the proprietor or even of the estate in arrear, sufficient to cover the amount of revenue payable to Government is not enough to exempt the estate from sale, unless the Collector has been asked by special petition, on or before the latest day to appropriate the amount in deposit to the satisfaction of the amount payable as revenue. The existence of such deposit in the Collectorate, or the fact that the arrear was small and that it was not paid owing to inadvertence or mistake may only be a reason inducing the Collector or Commissioner of Revenue to grant exemption from sale and it may also be a good reason for setting aside the sale when the sale has taken place on the ground of hardship or injustice under Section 26 of the Act. But in the case of deposit of money or of Government securities made payable to the order of the Collector, the provision of Section 15 applies and the estate may be exempted from sale.

***9. Deposit by persons, other than proprietors, to save estate from sale :**—The Collector or other officer as aforesaid

shall, at any time before sunset of the latest day of payment, determined according to Section 3 of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, is shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed, in good faith, would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

Note :—The object of this Section is to protect the interest of persons who have contingent interests in an estate, such as mortgagee and under-tenants. One of the objects for enactment of Act XI of 1859 was to give security to persons who have liens upon estates and who paid money necessary to protect such estates from sale. This section authorises the Collector to receive from any person other than the proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear

and enables the depositor to recover the amount in case of need, by a suit in the civil court and pending recovery of the amount, to obtain temporary possession of the estate.

The holder of a lien on an estate can save it from sale by depositing the amount of the arrear with the Collector. The amount so credited shall be added to the amount of the original lien.

***10 Separation of shares held in common by the opening of a separate account** :—When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own office, in the Court of the Judge. Magistrate (or Joint Magistrate, as the case may be), and Munsifs and in the police-thanas in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

***11. Separation of shares consisting of specific portions of land by the opening of a separate account** :—When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sadar jama heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for

publication of notice in the last preceding section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

***12. If objection be made, parties to be referred to the Civil Court :—**If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or, if the application be in respect of a specific portion of the land of an estate, that the amount of sadar jama stated by the applicant to have been heretofore paid on account of such portion of land, is not be amount which has been recognised by the other sharers as the jama thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

***13. Sale of separate shares :—**Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in Section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jama assigned thereto.

***14. Entire estate may be sold under certain conditions :—** If in any case of a sale held according to the above provisions the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon upto the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Govenment the whole arrear due from such share. If such purchase be completed, the Collector or other officer as aforesaid shall give certificate and delivery of possession as are provided for in Sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in Section 6 of this Act.

Note :—Before the enactment of these Sections, where one of several co-sharers in an estate failed to pay his quota of the revenue and so brought the estate into arrear, the other co-sharers had no alternative but to pay his quota out of their own pockets, if they would avoid the loss of their own shares which would be the result of a sale. One of the principal object of Act XI of 1859 was to obviate this hardship and to fulfil this object, Sections 10 and 11 have been enacted.

There is a distinction between a separate account opened under Section 10 and a separate account opened under Section 11 of the Revenue Sales Act, 1859. Section 10 speaks of a recorded sharer of a joint estate, holding his share jointly with his co-sharers in common tenancy, while Section 11 speaks of a recorded sharer, holding his share consisting of a specific portion of the estate. Section 10 applies to the case of a person who wishes to be treated by the Collector as an undivided share holder of a revenue-paying estate, while Section 11 applies to a case of one who desires to be recorded

Note.—This section applied only to money rent; produce rents were excluded. Rent did not accrue from day to day but fell due on the last day of each quarter of the agricultural year. The effect was that a suit for rent for a quarter instituted before the expiration of that quarter was premature[1]. Again, as rent fell due only at the end of each quarter, an auction purchaser of a tenure or holding was liable for the rent of the whole of the instalment even though he purchased it sometimes towards the end of the period in respect of which the instalment was due [2].

54. Time and place for payment of rent.—(1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made —

(i) at the landlord's village office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money-order in the manner prescribed by rules made by the Provincial Government.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form.

(5) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

1. Abbas v. Premsukh (1919) 58 I. C. 878.
2. Satyendra v. Nilkantha (1893) 21 Cal. 383.

Note.—This section was substituted for the old one by the Act of 1928. The amendment of this section was intended to remove the practical difficulties which discouraged the tenants from paying their rent by money-order and caused the landlords to dislike the system of payment. It was made clear that a tender made at the landlord's village office should be sufficient, and that a postal receipt of a money-order would be presumed by the Court as tender of rent by the tenant. The Select Committee's proposal to insist on a post-office certificate of the landlord's refusal to accept a rent money-order was not adopted; because it was not practicable to obtain such a certificate and, even if it could be obtained it would not be evidence unless formally proved. The reason which made the landlords reluctant to accept rents tendered by postal money-order and thus discouraged the tenants from making use of this method, was removed by providing in sub-section (4) that the landlord's acceptance of such rent should not be treated as admission or evidence as regards the particulars of the tenancy set forth in the money-order or operate as a waiver of his rights under the clauses relating to the transferability of occupancy holdings [1].

Sub-section (1) fixed the time for payment or tender of rent. If it was not paid or tendered before the sunset of the day on which it fell due, it became an arrear of rent. Sub-section (2) specified the places where payment or tender could be made. Sub-section (3) laid down a rule of evidence raising a rebuttable presumption of tender from a postal receipt of money-order.

55. Appropriation of payments.—When a tenant makes a payment on account of rent, such payment shall be credited towards the arrears, if any, the recovery of which is not barred by law for the time being in force, and the balance, if any, after the arrears have been satisfied, and where there is no arrear, the whole amount, shall be credited as the rent of the current year.

1. Notes on clause 36.

Government by way of security for the jama of the entire estate, and authorising the Collector to apply to the payment of any arrear of revenue that may become due from that estate, the whole or any portion of the said money or securities that may be necessary for that purpose, then, in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section 3 of this Act, the Collector shall apply to the payment of such arrear the said money or securities or such part thereof, or of any interest due on the said securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

All money and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

Note :—The object of this Section is to afford land-holders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by neglect or fraud of their agents. The Property might be very valuable, and if put up for sale, it might be sold for a sum very disproportionate to its value to its proprietor. The enable the proprietors to avoid any such risk, it has been provided that every zamindar paying revenue directly to Government for an entire estate can lodged with the Collector a sum of money or company's paper to apply to the payment of any arrear of revenue that remains due upon his estate after sunset of the latest day of payment. So long as any money or securities sufficient to cover any arrear shall remain at the hands of the Collector, the estate shall be exempted from sale for arrears of revenue. The money or securities shall be exempt from attachment otherwise than in execution of a decree of a civil court.

16. Withdrawal of the deposit :—It shall be competent to the person making a deposit under the foregoing provisions, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

17. Estate not to be sold for certain arrears :—No estate, held under attachment by the Revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue officer in pursuance of an order of a judicial authority shall be laible to sale for the recover of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

18. Estates may be specially exempted from Sale :—It shall be competent to the Collector or other officer duly authorised to hold sales under this Act, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share of an estate from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption : Provided, however, that the Collector or other officer as aforesaid or the Commissioner shall duly record in a proceeding the reason for granting such exemption : and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

19. Sales by whom and where to be made :—Sales shall ordinarily be made by the Collector or other officer duly authorised by Government in the Land-Revenue office at the

sadar station of the district : Provided, however, that it shall be competent to the Commissioner to prescribe a place for holding sales other than such office whenever he shall consider it beneficial to the parties concerned.

20. Adjournment of sales :—In case the Collector or other officer as aforesaid shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his Kachari; and so on, from day to day, until he shall be able to commence upon or to complete the sale, but with the exception of adjournments so made recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner as aforesaid.

21. Order of selling :— On the day of sale fixed according to Section 6 of this Act, sales shall proceed in regular order, the estate to be sold bearing the lowest number on the tauzi or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so in default of deposit, as provided in Section 22 of this Act.

Note :—The rules laid down in the section are prescribed with a view to prevent the officer holding the sale from capriciously putting up an estate out of its order on the rent-roll, and thereby surprising intending purchasers, and inflicting an injury, it may be, on the defaulting proprietor. They are in their nature, no doubt, purely arbitrary; but notwithstanding their nature, the observance of them is necessary, under the law, to give a purchaser an indefeasible title, and to prevent the defaulter from setting aside the sale on the score of irregularity. (9 M. I. A. 282).

22. Deposit on account of purchase money :—The party who shall be declared the purchaser of an estate or share of an estate, at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal post bills, currency notes or Government securities, to be valued at the market rate of the day, duly endorsed, twenty-five per cent on the amount of his bid; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

23. Full payment of purchase money :—The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And, in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorised for realising an arrear of public revenue, and such different shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

24. Re-sale :—When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in Section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may

have become subsequently due, shall be made by or on behalf of the proprietor of the estate or share, before sun-set of the third day, the issue of the notification of resale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale : Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realised.

25. Section 25 has been repealed and replaced by section 2 of the Bengal Land Revenue Sales Act VII of 1868 (B. C).

* **Appeal against sales to the Commissioner :**—It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale held under Act XI of 1859, if such appeal is preferred to him on or before the sixtieth day from the date of sale, or is presented to the collector or other officer duly authorised to hold sales under the Act for transmission to the Commissioner, on or before the 45th day from the day of sale. The Commissioner shall be competent to annul any sale of an estate or share of an estate which shall appear to him not to have been conducted according to the provisions of the Act, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale has been occasioned by the neglect of the proprietor, and the order of the Commissioner shall in such cases be final. (Section 2, Act VII of 1868).

The only ground on which a revenue sale can be set aside under Section 2, Act VII of 1868, is on the ground of irregularity in conducting the sale. This section is not limited to irregularities; it may disclose a case of hardship or injustice where no irregularity in conducting the sale exists, for instance, that the sale has taken place where no arrear is actually due and under such circumstances, the Government under the provisions of Section 26 of Act XI of 1859, may set aside the sale. (8 W. R. 439). An order passed by the Commissioner under section 2 of Act VII of 1868, is final and no appeal lies to the Board of Revenue.

Appeals can be brought by the defaulting proprietors, and they are entitled to appeal even though their names are not recorded under section 85 of Act VII (B. C) of 1876. (Board's Miscellaneous proceedings of 7th January 1888, No.131, Collection 7, file No.491 of 1887). The right to set aside a sale for arrears of Government revenue is not confined to proprietors alone, but extends to all persons such as mortgagees, having an interest in the property antecedent to its sale. (I. L. R. 17 Cal. 398). A reversioner cannot be regarded as the defaulting proprietor and has no right of appeal. Appeals against a sale for arrears of revenue must be accepted if presented at any time before the close of office hours of the sixtieth day from the date of sale.

The Commissioner is empowered to cancel any sale and award compensation and damages to the purchaser under this Act (Section 2, Act. VII of 1868), while under section 33, every person, whether defaulter or purchaser or any other, may have a remedy in the civil court. He is authorised to annul a sale not conducted according to the provisions of the Act. A sale of an estate for arrears of revenue which are not existent is null and void (5 Pat. L. J. 66).

The Commissioner or any revenue authority has no power to review his order annulling a sale held for arrears of Government revenue (I. L. R. 34 Cal. 677). But the decision of the Board of Revenue in this respect is otherwise. In a sale appeal to the Commissioner, the case was dismissed ex-parte, in the absence of the petitioner, who was late by a few minutes. On a fresh application for the restoration of the case in his file the Commissioner, in dismissing the same, held that he had no power to review his own decision. The Board held that there were sufficient grounds for holding that any revenue court in exercising final powers must be regarded as possessing inherent powers to rectify its errors and mistakes and take such steps as the ends of justice may demand. Accordingly, the Board, disagreement with the Commissioner, held that the Commissioner possessed the

power to restore the appeal if he thought this to be necessary for the ends of justice. (Board's Resolution No. 1851 sales, dated the 8th May, 1918, in sales file No. 9 of 1918).

An appeal to the Commissioner is not the only remedy open to the party whose estate has been sold. (29 Cal. 73). If the Commissioner will not interfere, the party who considers himself aggrieved, may bring an action in the civil court under section 33 of the Act XI of 1859 and may ask to have the sale set aside on the score of irregularity and the court may set it aside on proof of the existence of such irregularity and of substantial injury caused to the plaintiff by such irregularity. (8 W. R. 439).

***26. Annulment of sale in special cases :**—It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Note :—A petition of appeal may disclose a case of hardship or injustice, even where no irregularity exists, as for example, that the sale has taken place where no arrear exists under such circumstances the Government may set aside the sale under this Section (8 W. R. 437). The Board have regarded as genuine cases of hardship in the following circumstances :—

(1) mistakes or irregularities of Government servants ;

(2) mistakes of proprietors or their agents, not the result of gross carelessness; in particular, mistakes in challans or money order forms;

(3) delays in the post office;

(4) refusal of the Collector to accept payment of arrears after the kist day in cases in which previous defaults or the extent of the default does not raise the presumption that the default was intentional, or refusal to except after payment of arrear has actually been accepted ;

(5) ignorance on the part of proprietors of change in instalments ;

(6) fraud committed by agents of proprietors by not crediting the dues into the treasury;

(7) collusion on the part of co-sharers in bringing the estate to sale;

(8) inadequacy of price in special cases.

***27. Sales when final :**—All sales of which the purchase money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred or in respect of which no application under section 37A has been made or in respect of which no appeal under sub-section (3) of section 37B has been preferred, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

And sales against which an appeal may have been preferred and dismissed by the Commissioner or in respect of which an application under section 37A may have been made or an appeal under sub-section (3) of section 37B may have been preferred and such application or appeal has been dismissed shall be final and conclusive from the date of such dismissal, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

Note :—An appeal contemplated by this section must be preferred to the Commissioner not later than the sun-set of the 60th day from the day of sale, reckoning that day as one of the 60 (6 C. L. J. 472). As soon as the sale becomes final and conclusive, the title automatically vests in the purchaser, although possession is not obtained. (7, C. L. J. 387).

***28. Certificate of sale :**—Immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the prescribed form. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified. And the collector shall also notify such transfer by written proclamation in his own office and in the Courts of the Munsifs and police thanas within whose jurisdictions any part of the estate or share sold shall be situated.

Note :—The grant of a cetificate to the purchaser is a conclusive evidence that the notice required by Section 7 has been duly issued and served in the mahal; and no objection as to service of notice can be raised. (10 C. W. N. 137; 30 Cal. 1; 6 C. W. N. 688). But no certificate is valid if it has been issued before the expiry of 60 days from the date of sale, as required by Section 27. (18 Cal. 125).

29. Delivery of possession :— The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate The same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the malkachari or in some conspicuous place of the estate or share of an estate purchased.

30. Liability of purchaser :—The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

Note :—The liability of an auction purchaser at a revenue sale held under Act XI of 1859 to pay arrears of government revenue arises from the date of the sale when the title vests in the purchaser and not from the date of the sale certificate. (33 I. L. R. Cal. 1193). The purchaser of an estate sold for arrears of revenue on the 29th Pous, the latest day of payment of the revenue due for three months previous to Pous, is not entitled to recover from the defaulter the amount of revenue which he was subsequently obliged to pay for the month of Pous. (4 W. R. 75).

Government revenue does not become due from day to day, but at certain specified times according to the contract of the parties or the customs of the district in which the lands liable to pay such revenue are situate. Therefore, it is not liable to apportionment; and the person who is the owner of a revenue-paying estate at a time when the payment of the revenue falls due, is the only person liable for its payment. The purchaser of an estate, which pays government revenue, takes it subject to all revenue and cesses, whether in arrear or accruing. Held, therefore, in a suit by a purchaser for a certain sum for government revenue and cesses, which became due after the date of, though due for a period previous to his purchase, which sum he alleged he had been compelled to pay to save his interest in the subject of his purchase, that he was not entitled to recover (6 I. L. R. Cal. 389).

31. Application of purchase-money :–The collector shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly to the liquidation of all outstanding demands including the cost of notices referred to in section 6 debited to the estate or share of an estate in the public accounts of the district; then the residue, if any, shall be held in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in the following manner, namely, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

32. Notification of annulment of sale :—The annulment by a Commissioner or by the Board of Revenue of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rate of the

current public securities, which shall be paid by the Government, unless the proprietor shall have become liable for the sale under the provisions of Section 2 of the Bengal Land revenue Sales Act, 1868, or Section 26 of this Act.

***33. Jurisdiction of Civil Courts to annul sales :**—No sale for arrears of revenue made after the passing of this Act, shall be annulled by a Court of Justice, except (1) upon the ground of its having been made contrary to the provisions of this Act, and (2) then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of; and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section 2 of the Bengal Land-revenue Sales Act, 1868; and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section 27 of this Act; and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money : Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Note :–In order that a sale may be annulled by the Civil Court, three things are necessary, viz, (1) that the sale was contrary to the provisions of this Act; (2) that the plaintiff has sustained substantial injury by reason of the irregularity complained of; and (3) that the irregularity was specified by him in his appeal to the Commissioner, (6 Pat. 200 P. C).

The mere fact that the sale was contrary to the provisions of this Act would not be a ground of setting aside the sale, unless the plaintiff proves substantial injury resulting from the non-compliance. (53 Cal. 886; 30 C. W. N. 618). So also, a Civil Court will not entertain a suit to set aside a sale on the ground of its having been contrary to the provisions of this Act, where the ground was not declared and specified in the appeal made to the Commissioner. (17 Cal. 809 P. C; 21 Cal. 70 P. C.).

The civil court may set aside a sale on proof of irregularity and of substantial injury caused thereby. If no irregularity producing substantial injury is proved, the civil court cannot entertain an action to set aside a sale for arrears, and the only course open to an injured party is by a suit for damages, as provided in this section (8 W. R. 439). A suit may be brought in the civil court to set aside a sale held under this section on the ground that no arrears were due, although such ground was not declared and specified in an appeal to the Commissioner, as provided for in this section. (25 Cal. 876; 12 C. L. R. 198). But any person, who has received any portion of the purchase-money shall not be entitled to contest the legality of a sale. Where a sale for arrears of revenue has been held, and non-compliance with section 6 has been found, such a sale is null and void, as not being a sale under the provisions of this Act. (11 Cal. 201).

The onus lies on the person who seeks to have a sale set aside, to establish that the requirements of this Act have not been complied with, and that he sustained substantial injury. The fact that notice under Section 7 was not served in accordance with the provisions of that section does not lead to an inference of substantial injury. (10 C. W. N. 137; 2 C. L. J. 325). If the property is sold at an inadequate price owing to insufficient description of the property in the sale-notification this amounts to substantial injury and the sale will be set aside. (6 C. W. N. 526; 32 Cal. 542). When a sale is void, question of limitation does not arise. (9 D. L. R. 236).

34. Effect of annulment of sales by Court : — If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom. And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be rapid by him, with interest at the highest rate of

the current Government securities. And, if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

Note : — If the defaulting proprietor brings a suit to annul the sale and obtains a decree, but fails to execute the decree within six months, the effect is to restore the sale, and the purchaser is entitled to recover possession of the estate he bought. (21 Cal. 255). This section has no application to sales in execution of certificates. (25 Cal. 283). A sale which is an absolute nullity (e.g. a sale held where there is no arrear of revenue) need not be annulled by a suit in a civil Court. (37 C. W. N. 445).

35. If sale annulled, purchase-money to be refunded :— In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

36. Suit brought to oust purchaser on ground that purchase was made for another person to be dismissed :— Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Note :—The object of this Section is to prevent the true owner from disputing the title of his benamdar (certified purchaser) and not to preclude a third party from enforcing a claim against the true owner in respect of the benami property. (12 Cal. 302). This section would not preclude the real owner from instituting a suit for the specific performance of a contract entered into by the certified purchaser at the time of sale. (14 Cal. 583). The Legislature in enacting this section intended to give to a certified purchaser in possession a statutory title against the person, on whose behalf he had purchased.

***37. Rights of a purchaser of a permanently settled estate sold for its own arrears :** —The purchaser of an entire estate in the permanently settled area sold under this Act for the recovery of arrears of revenue shall acquire the estate free from all encumbrances imposed upon it after the time of settlement; and shall be entitled to avoid and annul all undertenures and forthwith to eject all under-tenants with the following exceptions :—

Protected interest :-(1) Istimrari or mukarari tenures which have been held at a fixed rent from the time of the permanent settlement.

(2) Tenures existing at the time of settlement, which have not been held at a fixed rent. But the rents of such tenures shall be liable to enhancement under any law for the time being in force.

(3) Talukdari and other similar tenures created since the time of settlement and held immediately under the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

(4) Leases of lands whereon dwelling houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk. But the tents of such leases shall be liable to enhancement under any law for the time being in force if the purchaser can prove that the lease was originally held at an unfair rent and not held at a fixed rent, equal to the rent of good arable land for a term exceeding 12 years.

But nothing in this section shall entitle the purchaser to eject any raiyat having a right of occupancy at a fixed rent or rate of rent or to enhance the rent of any such raiyat otherwise than in the manner prescribed by the law in force, or otherwise than the former proprietor may have been entitled to do.

Note :—To bring a case within the words of this section three things must concur : firstly, there must be a sale of an

entire estate; secondly, in the permanently settled districts; thirdly, for its on arrears. The sale of the estate does not per se avoid the under-tenures, but only renders them voidable at the option of the purchaser. (I. L. R. 9 Cal. 683). The right given under this section to the auction-purchaser of an entire estate in the permanently settled districts, sold for arrears of revenue, to avoid and annul an under-tenure is a right that must be exercised by all the purchasers jointly where there are more purchasers than one. (I. L. R. 25 Cal. 334).

***37A. Application for setting aside sales :—**Where any estate or share of an estate has been sold under this Act, the defaulting holder of the estate or of a share thereof or any person who holds an interest therein by virtue of a title acquired before such sale or any person whose interests are affected by the sale may, at any time within 30 days from the date of the sale, apply to the Collector to have the sale set aside on his depositing with the Collector—

(a) for payment to the purchaser, a sum equal to 3 per cent of the purchase money but not less than one rupee;

(b) for payment to the Provincial Government, a sum equal to the amount specified in the notification of sale as that for the recovery of which the sale was ordered together with such costs, if any, as the Provincial Government may have incurred subsequent to the issue of such notification of sale; and

(c) for payment to the Collector either the whole or any portion of the arrears of road, public works and primary education cesses which are due in respect of such estate or share of an estate, and not included in the amount specified in the notification of sale as that for the recovery of which the sale was ordered, as the Collector may, in his discretion, direct.

***37B. Sale when to be set aside :—**(1) Notwithstanding anything contained elsewhere in this Act where the deposit required by section 37A is made within thirty days from the date of the sale, the Collector shall make an order setting aside the sale, provided that no order shall be made unless the notice of the application has been given to the purchaser.

(2) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

(3) An appeal shall lie to the Commissioner against an order made under sub-section (1) refusing to set aside a sale if such appeal is preferred within thirty days from the date of the order.

***37C. Return of purchase money in certain cases :—**(1) Where a sale is set aside under section 37B, the purchaser shall be entitled to an order for repayment of his purchase money with or without interest as the Collector may direct; and

(2) As soon as may be after a sale has been set-aside under Section 37B, the setting aside of the sale shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the annulment by a Commissioner or by the Board of Revenue of a sale is required to be notified by section 32.

***37D. Amount paid to prevent sale to be a mortgage debt on the estate or share thereof :—**(1) Where the sale has been set aside at the instance of, and on the deposit by, a person other than the defaulting proprietor or proprietors, the amount paid for such setting aside of the sale, shall be deemed to be a debt bearing interest at 6 per cent per annum and secured by a mortgage of estate or a share thereof sold in favour of the said person.

(2) His mortgage shall take priority over every other charge on the said estate or share other than a charge for arrears of revenue.

(3) He shall be entitled to the possession of the said estate or share as mortgagees of the defaulting proprietor or proprietors and to retain possession of it as such until the said debt with interest thereon has been discharged.

(4) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Note :— Section 37A to 37D were inserted in 1943 and Cl.(c) of Section 37A and sub-section (2) of Section 37C were

inserted by Bengal Land Revenue Sales (East Bengal Amendment) Act, 1949.

38. Registration of certain tenures and farms :—The following rules for the registration of talukdari and other similar tenures created since the time of Settlement, and held immediately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

***39. Common and special registry :—**There shall be two sets of registers–one for common registry and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue, except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue, including the Government.

40. Application for registry :—The holder of any talukdari or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs.

The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable :—

(1) The pargana or parganas in which the tenure is situated;

(2) the nature of the tenure;

(3) the name or names of the village or villages whereof the land is composed, or wherein it is situated ;

(4) the area of the land comprised in the tenure, with its boundaries in complete detail;

(5) the amount of rent payable annually for the tenure and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it;

(6) the date of the deed constituting the tenure, or the date when the tenure was created;

(7) the name of the proprietor who created the tenure;

(8) the name of the original holder of the tenure;

(9) the name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

***41. Procedure on application for common registry :-** When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorised agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice with a copy of the application annexed to be affixed in his office, and at the mal-cuthcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of The Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court ; otherwise he shall grant the application. If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

***42. Procedure on application for special registry :—**When the application is for special registry, the Collector shall

serve and issue the notice prescribed in the last preceding section.

If within the limited time no objection is made, the Collector shall cause any inquiry that he may deem necessary for the security of the Government revenue to be made; and, if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

If within the limited time any recorded proprietor, or any party interested not being a proprietor, object to the registry, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

43. Registration of leases of certain lands :—Leases of lands of the description specified in the fourth exceptional class in section 37 may be registered, at the option of the holders in the manner and under the rules hereinbefore provided for the registry of talukdari and other similar tenures.

44. Registration of old tenures :—Tenures of the first and second exceptional classes in section 37 may be registered at the option of the holders; and when so registered, shall be entered only in the special register.

Application for such registry shall contain the particulars specified in section 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such inquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected.

If within the limited time, any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time : Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of bona fide tenures of the description herein referred to.

45. Repealed by the Bengal Land Revenue Sales (Amendment) Act (Bengal Act III of 1862).

46. Expenses of measurement, survey or local inquiry :— The actual expenses of any measurement, survey or local inquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

47. Civil Court and competent to order entry in the special register :—No Civil Court shall be competent to order the Revenue-authorities to enter any tenure or farm in the special register : Provided always that the refusal of the revenue-

authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

48. Suit for cancelment of registry of tenure or farm :— Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

49. Proceedings of Revenue-authorities in registration of tenures, etc :—In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue-authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue-authorities to whom they are subordinate, and from the Local Government; and all orders passed under the sections aforesaid shall be open to appeal in usual course.

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue on the ground of the Government revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be.

***50. Effect of entry in special register :—**Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue : Prvided that a tenure or farm in the hands of a bona fide purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

51. Protection of talukdari tenures pending inquiry, in case of sale of parent estate for arrears of revenue :—Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in

respect of which the Collector shall have commenced the inquiry prescribed in section 42, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such inquiry, and shall be protected eventually by registration, if the final award of the Revenue-authorities upon such application be in favour of the claimant.

52. Rights of purchaser of estate not permanently settled, sold for its own arrears :—The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, saving always and except leases of lands whereon dwelling-houses, manufacturies or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds, have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect :

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom

of the pargana, mauza or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the law for the time being in force.

Note :—The purchaser of an estate in a district not permanently settled, sold for its own arrears acquires the estate free from all incumbrances imposed upon it after the time of settlement and are entitled to avoid and annul (1) all tenures originating with the defaulter or his predecessors, as well as (2) all engagements with raiyats or the like, settled subsequent to the last agreement and (3) all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew except (1) leases of land whereon dwelling houses, manufactories or other permanent buildings have been erected or (2) whereon gardens, plantations, tanks, canals, wells, places or worship or burning or burying grounds have been made or (3) wherein mines have been sunk. These leases and engagements shall continue in force and effect so long as the land is duly appropriated for such purposes and the stipulated rent is paid. The purchaser, however, is not entitled to demand higher rent from person whose tenure or agreement may be annulled, unless the lands have been held at lower rate of rent than was justly demandable by the former proprietor or unless it was shown that according to the custom of the pargana, mauza or other local division, such persons are liable to be called upon for any new assessment.

***53. Purchase when subject to incumbrance : Rights of purchaser being sharer in estate; and of purchaser of estate not sold for its own arrears** :—Excepting sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats which were not possessed by the previous proprietor at the time of the sale of the said estate.

Note :—The object of this Section is to prevent fraud that may arise when a proprietor may intentionally allow his estate to fall into arrears of revenue with the objects that it may be sold free from encumbrances when he may buy it in benami. When a person purchased an estate at a revenue sale in the name of his servant and on his default it was again put up for sale, and he re-purchased it, the case fell under this section and he was not entitled to avoid any encumbrances but purchased the estate subject to encumbrances. (31 Cal. 393). He ought to have avoided the encumbrances under section 37 at the time when he first purchased it. Excepting shares with whom separate accounts have been opened under sections 10 and 11 of the Act, any recorded or unrecorded proprietor or co-partner purchasing an estate sold for arrears of revenue acquires it subject to all encumbrances existing at the time of sale, even if the purchaser is a non-defaulting proprietor and encumbrances are created by the defaulting proprietor. (16 W. R. 136).

The purchaser of an estate not sold for its arrears acquires the same subject to all its incumbrances existing at the time of sale and does not acquire any rights in respect of under-tenants or raiyats which were not possessed by the previous proprietor at the time of the sale of the said estate. Where a person purchased a portion of an estate at an execution sale, and before it was confirmed and the sale-certificate came into his hands, the whole estate fell into arrears of revenue and put up for sale and he again purchased it, he must be treated as an un-recorded co-partner under this section and he took the entire estate subject to incumbrances. (4 Cal. 607).

***54. Rights of purchasers of shares of estate** :—When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all incumbrances and shall not acquire any rights which were not possessed by the previous owner or owners.

Notes :—A distinction must be drawn between Sections 53 and 54. Under Section 53, the purchaser will acquire the property subject to all incumbrances "existing at the date of sale," whether created before or after the default and even up to the date of sale. But the words "existing at the date of sale" do not occur in Section 54. From this it is evident that the Legislature intends that under Section 54, all incumbrances created after the date on which the purchase takes effect (i.e. all incumbrances created after the default) are void. Thus, where a share admitted to special rigistry under Sections 10 and 11 was advertised for sale under Section 13, for arrears of revenue, and subsequent to the default but before the sale the recorded sharer mortgaged his interests in that share, it was held that the mortgage was not an incumbrance under Section 54, and was of no effect against the purchaser. (17 Cal. 148; 7 C. L. J. 1). If a mortgagee purchases the mortgaged property at a sale in execution of the mortgage-decree so that the mortgage lien is not extinguished but is kept alive, and then another person purchases the mortgaged property (which is a share of a revenue paying estate) at a revenue sale, which takes place between the date of the sale in execution of the mortgage decree and the date of the confirmation thereof, his purchase will be governed by this section, and he acquires the property subject to the mortgage. (13 Cal. 546).

Adverse possession for 13 years does not constitute an incumbrance on the share. (13 C. W. N. 407). That is, if the adverse possession was completed before default, the default must be treated as the default of the person who acquired title by adverse possession, and the sale must be held to pass his interest. (12 C. W. N. 528).

A purchaser of a share of an estate held by a Hindu widow, at a sale under Section 13, does not acquire merely the right, title and interest of the widow but takes the entire share itself which is exposed for sale. The words "shall not acquire any rights which were not possessed by the previous owner or owners" are not applicable to such a case. These words mean that the purchaser shall not acquire any rights which were never possessed by the previous owner or owners at any time.

(23 Cal. 641; 11 C. W. N. 821). The purchaser of a share or shares of an estate acquires the same subject to all the encumbrances and shall not acquire any rights which were not possessed by the previous owner or owners.

55. Recovery of arrears due to defaulters :—Arrears of rent or cesses which on the latest day of payment may be due to the defaulter from his under-tenants or raiyats shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

Note :—The word "or cesses" was inserted by Bengal Land Revenue Sales (East Bengal Amendment) Act, 1949.

56. Punishment for contempt :—Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable if not paid to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect :

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

57. Default in making deposit to be considered a contempt :—A default to make good a bid by making the deposit required by section 32 of the Act shall be held to be a contempt.

***58. Government may purchase at a sale :**—When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid, in both which cases the Government shall acquire the property subject to the provisions of this Act.

Note :—The section provides for purchase by the Government at a revenue sale in two cases. It first provides that if there is no bid when an estate is put up for sale under the Act, the Collector may purchase the property on account of the Government for one rupee. This clearly implies that the Collector is himself not to bid in the first instance. He is to ascertain whether there are any bidders for the property. It is only when no one offers any bid, the Collector may purchase the estate for one rupee.

The section provides in the second place that when there are bidders but the highest bid is insufficient to cover the amount realisable, the Collector may purchase the estate on account of the Government at the highest amount bid. The highest bid referred to here is one not arrived at by competition between the Collector and the ordinary bidders. Under this section it is not open to a Collector to compete with ordinary bidders. If the Collector chooses to enter the ring as an ordinary bidder, he must be treated as such and in order to succeed, he must outbid the other intending purchasers. If on the other hand he desires to take advantage of the second part of this section, he must wait and see whether the highest bid is or is not sufficient to cover the amount realisable. (I. L. R. 31 Cal. 1036).

LEADING CASES

Chapter—IX

HURRYHAR MUKHOPADHAY (Plaintif)

Vs.

MADHAB CHANDRA BABOO & OTHERS (Defendants)

(14 M. I. A. 152)

Facts of the case : The appellant filed his plaint in the Court of the Collector of Hooghly to uphold his mal rights under the Decennial Settlement in certain lands in a village which lay within and formed part of the appellant's zamindary, which the defendants and others were holding as lakhiraj. The defendants undertook to prove that their tenures existed before December, 1790.

After taking evidence, the principal Sudder Ameen held that the documents relied on by the respondents to prove their Lakhiraj title were not shown to be genuine or applicable to the lands in suit i.e. they had failed to prove their Lakhiraj and decreed in favour of the appellant.

On appeal from this decree the respondents relied on the limitation of suit and proof of their Lakhiraj title. A division Bench of the High Court of Calcutta dismissed the appeal.

A petition for review was presented on the ground amongst others that, as the appellant, in his plaint, had stated that the disputed lands were his mal lands, the High Court had erred in throwing the onus of proof on the defendants. The review was admitted on this ground (whether the onus had not been wrongly thrown, with reference to the full Bench decision in Sanaton Ghose Vs. Moulvi Abdul Turrab, in which case, the High Court held, that the onus was on the zamindar and not on the Lakhirajdar, and that as the onus being on the zamindar, the appellant, permission was given to amend his plaint and to prove that the land was mal, by showing that he had received rent for the same) and the suit was remanded to the Lower Court.

The appellant preferred the appeal from this decree remitting the suit to the Privy Council.

The point for decision : Upon whom the onus of proof lies in suits by a zamindar for resumption of rent-free tenures.

Decision : It was held that the onus of proof lies upon the zamindar.

Judgment and reasons for decision : It was argued on behalf of the appellant that it was not contested in the suit that the lands formed part of the appellant's Decennially Settled estate, and secondly, that the burden of proof of exemption from assessment was on the respondents, (the Lakhirajdars) and not on the appellant, (zamindar). It was also argued on behalf of the appellant that the remand was improper, because the suit had already been finally decided in the appellant's favour and ought not to have been admitted to a review, in order to give the defendants the benefit of what had been decided in the other cases after such final judgment had passed.

Their Lordships observed that the application for a review seemed to have been regularly made within 90 days of the date of the decree sought to be reviewed, pursuant to Sec. 377 of the Code of Civil Procedure; and this being so, their Lordships conceived that it was competent to the High Court to delay their final decision on that application until the law on the point on which so much doubt existed had been settled by the judgment of the full Bench of the High Court.

Therefore their Lordships thought that the final order of the High Court was correct and dismissed the appeal.

Points decided : (1) In a suit by a zamindar for resumption of rent free tenures, the onus is upon the zamindar to prove that it lies in his mal lands.

(2) It is competent to the High Court to delay the final decision until the law on the point on which much doubt existed had been settled by the judgments of the full Bench of the High Court.

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*LOPEZ Vs. MADAN MOHAN THAKUR
(13 M. I. A. 467)

Facts of the case : The plaintiff, Lopez was the proprietor of a very considerable estate on the banks of the Ganges. By reason of the encroachment of a river, the estate was wholly submerged by the year 1840, and the estate of the defendant became the river boundary. After the lapse of some years, the water retired and the land gradually became hard soil. The plaintiff claimed it was his property. He said that the Ganges which swallowed it, had again yielded it up. The defendant, on the other hand, claimed it as a gradual accession to his estate, caused by the recession of the river. He based his claim upon section 4 of the Alluvion and Diluvion Regulation XI of 1825. The land was reformed on the ascertained site of the plaintiff's estate, and was thus capable of identification.

The Sudder Ameen decreed the suit. On appeal of High Court of Calcutta dismissed it. The plaintiff Lopez appealed to the Privy Council.

Point for decision : Whether the defendant could claim the land as an accretion to his estate, under the Alluvion and Diluvion regulation.

Decision : It was held by the Privy Council that as the land had never been abandoned by the plaintiff and as it was capable of identification, the defendant could not claim it as an accretion.

Judgment and reasons for decision : Sec. 4, Cl.1 of Regulation XI of 1825 provides that "where land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed." This clause refers to cases of gain, and there is no words which imply the confiscation of any private person's property. If a statute is to be construed as taking away anybody's property the intention to take away must be expressed in very plain words. When the words of the whole Regulation are looked at, it is quite obvious that what the Legislature was dealing with, was the gain which an

individual proprietor might take in this way, from that which was part of the public territory, and not with any gain from private property.

This rule is, therefore, not governed by Cl. 1 of Section 4 of the Act and must be decided according to clause 5 of the said Act by the rules of justice and equity. Now, it is a principle founded in universal law and justice, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard covered by lava or ashes from a volcano, or a field covered by the sea or a river the ground, the site, the property remains in the original owner. This is also the rule of English Law. The site is the property and the law knows no difference between a site covered by water and a site covered by crops, provided the ownership of the site be ascertained.

Property absorbed by a river, however, is not recoverable by the original owner under all circumstances. It may have been so completely abandoned as to become, through lapse of time, a part of the public domain, liable to be gained by an adjoining owner as an accretion. But in this case the plaintiff Lopez never abandoned the land. He continued to pay rent for it to the State, and had the description and measurement of his submerged mouza recorded by the State. The land having now re-appeared and being capable of identification, he is entitled to it.

Points decided : (1) Where land swallowed up by a river or sea, re-appears on the old site, it is not an increment to the estate to which it has attached, but is still the property of the original owner, unless he has abandoned it. (2) If a statute is to be construed as confiscating anybody's property, the intention must be clear.

*MAHARANI RAJROOP KOER Vs. ABDUL HOSSEN

(7 I. A. 240 ; 6 Cal. 394 P. C.)

Facts of the case : The ancestors of the plaintiff Maharaja of Tikari had constructed an artificial watercourse on the defendant's land making compensation to them. This was more than 20 years, and possibly 50 or 60 years, before the suit. The defendants having obstructed the flow of water along the water-course, at several places, the Maharaja brought this suit for removal of the obstructions.

The Munsif of Gaya found that the Maharaja had the right to the use of the watercourse and he ordered the removal of all the obstructions excepting two. He found that these two obstructions had been made more than two years before the suit. On appeal, the Subordinate Judge, held that the two years' rule of limitation did not apply. On further appeal, the High Court reversed the decision of the Subordinate Judge and restored the decision of the Munsif.

The plaintiff Maharaja died during the pendency of the appeal in the High Court. His widow, the Maharani, appealed to the Privy Council, which allowed the appeal and restored the decision of the Subordinate Judge.

Point for decision : Was the two years' rule applicable to the case?

Decision : No.

Judgment and reasons for Decision : Section 27 of the Limitation Act, 1871 (Sec. 26 of the present Act) provides that a right to any watercourse or use of water etc. may be acquired by 20 years' user under certain circumstances, subject to the condition that each of the said periods of 20 years must be one ending within 2 years next before the institution of the suit. The Courts below have found that two of the obstructions were more than 2 years old. It may be said that there has been no peaceable enjoyment within 2 years of the suit as required by section 27 of the Limitation Act, and consequenty the plaintiff did not acquire any easement under that section.

The plaintiff's right is not based upon section 27 of the Limitation Act. That section does not provide the only means for acquiring an easement. The limitation Act contains two sets of provisions which are in their nature distinct. One relates to the limitation of time for bringing suits and the other to the manner of acquiring title by possession and enjoyment. There latter provisions are not exhaustive. A man may acquire title under them, but they do not preclude or interfere with other modes of acquiring title.

Upon the facts found by the Courts below, this is an artificial watercourse, constructed on another man's land, at a distant period and enjoyed ever since down to the time of the obstructions. The proper inference from these facts is that there was a legal origin of the plaintiff's right. The Court ought to presume a grant or an agreement with the owner of the land at some distant time. That being so, the plaintiff does not require the aid of section 27 of the Limitation Act.

The next question is whether the plaintiff's suit for removal of the obstructions is barred by limitation. Article 31 of the Limitation Act, 1871, provides that such suits must be brought within two years from the date of the obstruction. The High Court seems to have proceeded upon this Article. This is clearly wrong. The obstruction are in the nature of continuing nuisances and the cause of action accrued from day to day. Section 24 (now Sec. 23) of the Act contains express provisions to that effect.

The decree of the High Court must therefore be reversed and that of the Subordinate Judge restored.

Points decided : 1. Secion 27 of the Limitation Act of 1871 (now Sec. 26 Act IX of 1908) is not exhaustive and is not the only mode of acquiring easements.

2. Where the origin of an easement can be referred to a grant, it is not destroyed by two years' discontinuance.

3. Where the origin of an easement is unknown, and there has been long and continuous user of it, it ought, if possible, to be referred to a legal origin.

4. In the case of a continuing wrong, a fresh period of limitation starts from every moment of the period during which the wrong continues.

***MOHESH NARAIN Vs. NAWBUT PATHAK**

(33 Cal. 837; I. C. L. J. 437)

Facts of the case : The plantiff Mohesh Narain was part owner of a well-known hill in Rajmahal, named Tinpahar. The hill was used for the purpose of quarrying stones. The defendant Nawbut Pathak had at first obtained a lease of the hill from all the co-owners representing the sixteen annas share. On the expiry of that lease Mohesh declined to renew the engagement with respect to his six-annas share, and Nawbut obtained a renewal only from the ten-annas proprietors. He, however, continued quarrying operations as before. Mohesh served a notice asking him to stop quarrying to which Nawbut paid no heed.

Thereupon Mohesh brought this suit against Nawbut and his lessons (the co-sharers of the plantiff) for an injunction to restrain him from further quarrying and carrying away the stones, for an account of all stones quarried since the expiry of the old lease, and for the recovery of Rs. 5,200 as the value of the plaintiff's share in such stones. Nawbut pleaded that by virtue of his lease he stood to the plaintiff in the position of a co-sharer, and that as he had quarried much less than ten-sixteenth of the hill, the plaintiff had no right to claim damages or account.

The Subordinate Judge who tried the case found that a dozen centuries of quarrying would not visibly affect the hill. But he was of opinion that the plaintiff was entitled to claim an account and also to claim his share of the value, before severance, of all stones quarried. He gave the plaintiff a decree for a six-sixteenth of the royalty for the stones, calculated at the prevailing rate. Both parties appealed to the High Court of Calcutta.

Point for decision : Whether the plaintiff has any right to damages or to an account against Nawbut.

Decision : It was held by the High Court (Harrington & Mockerjee, J. J.) that as there had been no ouster of the plaintiff from the joint property, and as Nawbut had not received more than his share of the joint-property, the plaintiff's claim must be dismissed.

Judgment and reasons for decision : For the purposes of this case, Nawbut must be regarded as being in precisely the same position as his lessors, the co-sharers of Mohesh. If, therefore, Mohesh was entitled to an injunction against his co-sharers or to call on them to render him an account of the stone quarried away, he is also entitled to enforce those rights

against Nawbut. But if he was no right of action against them, he has none against Nawbut.

Every co-tenant has the right of using the common property, in the way in which it is proper to use it. So long as his use does not amount to ouster of his co-tenant, or to the destruction, partial or entire, of the joint property, he is not bound to render any account to his co-sharer. Every use, however, involves some slight injury or destruction, and in the present case, there can be no valuable use without removal of the stones. The proper and legitimate use of the hill is to quarry stones on it. An action of account therefore cannot lie, unless it is alleged and proved that the defendant received more than his just share.

If the contrary view prevailed, one co-owner could prevent other co-owners from using the joint property. One co-owner might then, by expenditure of capital and labour, reap advantages, which he would be obliged to share with the other, but if he incurred any loss, he would not be entitled to throw the burden upon his co-sharer.

Where one co-tenant ousts another co-tenant, he may be sued in trespass; if he destroys the property, he is liable in trover; if there is an express or implied contract, he is liable to account. In the present case, there has been neither ouster, nor destruction, nor any contract to account. The plaintiff, therefore, cannot succeed. Nor has he any right to damage. He can quarry stones for himself and so obtain his share of the joint property. There is ample remaining to satisfy his six annas share, if he will only take it.

The appeal of Mohesh was dismissed and that of Nawbut allowed, the result being that the suit was wholly dismissed.

Points decided : 1. A tenant-in-common cannot be held liable to co-tenants for damages or for an account, for use and occupation of the joint-property, unless there has been waste or an ouster of his co-tenants.

2. When one tenant in possession has prevented his co-tenants from obtaining from the property such profits as it was capable of yielding, or has taken possession of the whole, he must account either for the fair rental value of the profits, or be liable for damages or mesne profits.

*KRISHNAPADA CHATTERJEE Vs. MANADA SUNDARI GHOSH

(59 Cal. 1202; 36 C. W. N. 518)

Facts of the case : The landlord of a holding parted with his interest in 1923 after obtaining a decree for arrears of rent of the holding. The tenant was against in arrears and the new landlord also recovered a decree for rent and the holding was sold in execution in 1927. Before the sale, the appellant purchased the interest of the tenants. There was a surplus of sale proceeds after satisfying the decree of the new landlord, which remained in deposit in Court. The respondents, who were the heirs of the old landlord, now claimed to have their decree satisfied out of this money. The appellant said that they had no right to do so, as the money belonged to him, as purchaser of the holding before the sale. He brought this suit against the respondants, heirs of the old landlord, for a declaration to this effect.

If the old landlord's decree was still a first charge on the holding, notwithstanding that he was no longer the landlord after 1923, that charge had been transferred to the surplus sale proceeds, upon the sale of the holding in 1927, and the respondents, his heirs, could take the money. If, on the other hand, the decree ceased to be a charge upon their parting with the landlord's interst in 1923, they were but ordinary creditors of the old tenants and could take only such property as belonged to them.

Ordinarily, they could have taken it. But the plaintiff having purchased the interest of the old tenants before the sale in 1927, the surplus sale proceeds belonged to him and not to the old tenants. The respondents, as heirs of the old landlord, could not take any property not belonging to their judgment debtors, the old tenants, unless they had a charge upon it.

The Munsif as well as the Subordinate Judge on appeal held that the charge of the old landlord was subsisting, upon the authority of the Full Bench case of Khetrapal V. Kritartharmoyi, and dismissed the suit. Plaintiff appealed to

the High Court. The Division Bench before which the appeal came up for hearing was of opinion that Khetrapal's case was no longer good law, in view of the later Privy Council decision of Forbes V. Maharaj Bahadur. This case was therefore referred to a Special Bench of seven judges, who unanimously allowed the plaintiff's appeal.

Point for decision : Has a landlord, who has parted with his interest, any right to bring a tenure or holding to sale, for its arrears or rent, under section 65 of the Bengal Tenancy Act?

Decision : No.

Judgment and reasons for decision : In Khetrapal's case, a Full Bench held that if a landlord parted with his interest after obtaining a decree for arrears of rent, he is still entitled to the benefit of Sec. 65 of the Bengal Tenancy Act. But after that case, it has been decided by the Privy Council in Forbes's case, that a landlord who parted with his interest before obtaining a decree for arrears of rent, is not entitled to the benefit of that section.

It is true that in so deciding the Privy Council did not in terms overrule Khetrapal's case, but only distinguished on the fact that the decree in that case had been obtained before the landlord parted with his interest. But that was not the ground of their Lordships decision.

In Forbes's case the Privy Council proceeded upon the broad ground that the crucial time is not when the decree was obtained but when the tenure or holding was sold. If at the date of the sale, the decree holder was no longer the landlord, he cannot have the advantage of a sale under section 65. Hence, Khetrapal's case is no longer good law, having been in effect though not in words overruled by the Privy Council.

The appeal must therefore be allowed and the appellant's suit was decreed.

Points decided : 1. The rent of a tenure or holding under the Bengal Tenancy Act, remains a first charge thereon under section 65 of the Act, so long as the relationship of landlord and tenant subsists.

2. The right to bring a tenure or holding to sale in execution of a decree for rent thereof exists so long as the rent remains a first charge thereon.

3. The Full Bench Case of Khetrapal Vs. Kritarthamoyi, 33 Cal. 566 F. B. has in effect been overruled by the Privy Council in Forbes V. Maharaj Bahadur, 41 1.A.91.

***TURNER MORRISON & CO., LTD (Defendant)**

Vs.

MONMOHAN CHOUDHURY (Plaintiff)

(36 C. W. N. 29)

Facts of the case :—The claim in the suit was to eject the appellants from certain plots of land forming part of a taluk called Ram Mohan. This taluk was under a revenue-paying estate known as Taraf Asad Mosad Khan. The plaintiff's title to eject was founded on the right of a purchaser of an estate sold for arrears of revenue to avoid and annul all incumbrance as provided by Sec. 37 of Act XI of 1859.

The taraf was sold on the 19th May, 1913, for unpaid revenue and was purchased by the predecessor-in-interest of the Plaintiff-Respondent. He brought the suit for ejectment on the 16th April, 1923, on the allegation that the sale made was free of incumbrances and consequently that he was entitled to recover actual possession of the property in suit.

The defendant contended, inter alia, that their holdings were under the talukdars of taluk Ram Mohan and that they could not be ejected from their lands unless the zamindar annulled the taluk, which he had not done. The plots in suit were purchased in 1904 by the firm of turner Morrison & Co., who transferred them in 1914 to the limited company of the same name.

The trial judge held that the purchaser of this taraf could not eject the appellant without first annulling the taluk. On this ground he dismissed the suit with costs. On appeal the High Court held that the purchaser at a revenue sale was entitled to eject the tenants of a talukdar without annulling

the taluk in which they held. Against the decree of the High Court, the defendants appealed to the Privy Council.

Point for decision : Whether the purchaser of an estate at a revenue sale can annul the tenants of the talukdar without annulling the taluk which is under the revenue paying estate.

Decision : No.

The judgment and reasons for decision : The respondent relied in his plaint on the provision that the purchaser should acquire the estate free from incumbrances. His case was that the tenancies of the appellants were incumbrances which were determined by the sale. This was denied by the appellants who contended that the taluk under which they held had not been avoided or annulled by the respondent, and that so long as it stood they could not be ejected by him.

The principal issue in the suit is the taluk. The Subordinate Judge held that the plaintiff must fail on the ground that the intermediate taluk under which the disputed lands are held has not been annulled, and he accordingly dismissed the suit. The High Court came to the opposite conclusion.

Their Lordships are of opinion that the provisions relating to annulling incumbrances in both the B. T. Act and Revenue Sales Act are not in pari materia, and the differences between them are considerable. Under the B. T. Act an intermediate tenure is an incumbrance. Sec.159 and Sec. 161 of the B. T. Act defined incumbrances. But in their Lordships' opinion it is not so under Sec. 37 of the Revenue Sales Act of 1859. This Section draws a clear distinction between incumbrances and under tenures. Incumbrances are wiped out by the sale, in the case of under-tenure the purchaser is only entitled to avoid and annul them and on doing so, that is upon exercising his option to annul, he can eject all under-tenants. What is intended by the expressions "under-tenures" and "under-tenants" is shown in the exceptions. The third exemption refers to "talukdars" and other similar tenures. These can be annulled by the purchaser unless they fall within the provisions of the exception. The taluk in the

present case, therefore, is an under-tenure within the meaning of the section and the purchaser's right in respect of it is only a right to annul.

Unless and until the taluk is annulled it continues. The talukdar becomes the under-tenant of the purchaser and the tenants holding under him are not effected by the change of proprietorship. There is no contract between them and the purchaser and the latter cannot either claim rent from them or eject them so long as he allows the taluk to continue. The purchaser could, no doubt, sue for possession of the holdings joining both the talukdar and the talukdar's tenants. But their Lordships are unable to see what cause of action the purchaser can have against the tenants of the talukdar as long as the taluk subsists. Their contract is with him and their liability is to him and not with or to his superior landlord.

That the talukdar did not regard it is an annulment of his tenure is clear from the fact that he received his rent from the appellants down to the institution of the suit. Moreover for 10 years after the sale the respondent took no steps to assert his right to possession.

For the reasons given their Lordships were unable to support the decree of the High Court. The appeal was decreed with cost and the decree of the Subordinate Judge was restored.

Point decided : The purchaser at a revenue sale is not entitled to eject the tenants of the talukdar without annulling the taluk in which they held.

***WATSON AND COMPANY (Defendants)**

Vs.

RAMCHUND DUTT & OTHERS (Plaintiffs)

(18 Cal. 10)

Facts of the case : The plaintiff's case was that Gangaram, Ramchand and Pudmalochan were brothers and constituted a Hindu family joint in estate. They were the owners of twelve annas share of Pargana Silda in Midnapore as Patnidars and two annas of the same as maurasi mokararidars, totalling

fourteen annas share. Pudmalochan by the two deeds of endowment had dedicated his one-third share of the Patni interest in 12 annas of silda, appointing himself Shebait for life and his brothers after him and to this interest Ramchand had succeeded. Watson and Company had been, while Padmalochan lived, tenants to him and his brothers, and after his death to the plaintiffs alone, of those 14 annas for a term of years which expired on the 14th September, 1883 and were tenants of the remaining 2 annas of Silda for an unexpired term under a lease granted by one Rani Durga Kumari. On the expiration of the first-mentioned term the defendants Watson and Company, though only then entitled to one eighth of the entire joint property continued to hold exclusive possession of and cultivated indigo in the property. The plaintiffs further contended that as the grant for 2 annas in maurasi mukarari had been made in the name of Ramchand Dutt alone, his brother Padma took no interest therein.

This suit was brought by two brothers Gangaram and Ramchand Dutt on the 29th February, 1884 for recovery of possession of a 14 annas share of khas lands by virtue of ijmali title, together with damages and for a permanent injunction restraining the defendants Messrs. Watson and Company, from cultivating indigo.

The defendants admitted the fact of the two deeds of endowment having been executed but contended that they had never been acted upon and Pudmalochan's interest passed by inheritance to his daughter Bamasundari and Watson & Company had received through her a good title as to the whole of Pudmalochan's interest in the 12 annas patni and also the 2 annas of maurasi mokarari and the plaintiffs had no right to it. They were not entitled as joint-proprietors to damages or to an injunction restraining the defendants from carrying on the cultivation of indigo on the khas lands.

This suit went upto the Privy Council with conflicting decisions by the District Judge of Midnapore and the High Court of Calcutta.

The point for decision : Whether the plaintiffs were, under the circumstances, entitled to a decree for joint possession or to damages or to an injunction on the cultivation of indigo.

Decision : No.

Judgment and reasons for decision : It was argued on behalf of the appellants that the plaintiffs had no interest in more than two-third's of a 14 annas share of Silda; Watson and Company acquired a right to the share, which belonged to Pudma, of the 12 annas of the patni. The deeds of dedication had never been acted upon and had no effect to divest Pudma of his interest. The defendants derived title from him as to his share through his daughter. As to the 2 annas of Silda, there was nothing to prevent Pudma taking his share of the 2 annas joint estate. So his one-third share in both Patni and maurasi mukarari descended to his daughter. On the question of law the plaintiffs were not entitled to damages, or to an injunction. There had been prevention on the part of the Watson & Company of interference by others with their cultivation but no actual ouster of the plaintiffs, such as to affect the latter's title. It was against law to entertain claims for damages or for injunction between the tenants in common. The only remedy open to the plaintiffs was to demand a partition.

Their Lordships observed that from the date of the execution of the deeds until after the death of Pudmalochan, no change took place in the accounts, or in the management of or dealing with the business or estates or the proceeds thereof. It was a Hindu family joint in estate. Mortgages were executed in which Pudma joined and everything appeared to have gone in the same manner as if the deeds had never been executed. It was not the intention of Pudma or of his brothers that the deeds should be acted upon. The deeds were merely fictitious. Their Lordships were of opinion that the mukarari property must be assumed to have been purchased with funds of the joint family and to have enured for the benefit of the 3 brothers. At the date of the suit the interest of the plaintiffs in the lands in suit was only two undivided third part of an undivided share of 14 shares of Silda and Bamasundari was at that time entitled to the other undivided third part thereof.

Pudma was not divested of his interest in the property as erroneously held by the High Court.

It was contended for the respondents, that the acts of the Watsons amounted to what in England is called on actual ouster, and that the plaintiffs were entitled to a decree ordering them to be put into ijmali possession with the defendants but their Lordships replied that the plaintiffs could not establish a right to have such a decree. In a case like this, an injunction is not the proper remedy. In India a large portion of the lands is held in undivided shares, and if one shareholder can restrain another from cultivating a portion of the estate in a proper and husband-like manner, the whole estate may, by means of cross injunctions, have to remain altogether without cultivation until all the share holders can agree upon a mode of cultivation to be adopted, or until a partition by metes and bounds can be effected. Such a work which, in ordinary course, in large estates would probably occupy a period including many seasons. In such a case, in a climate like that of India, land which had been brought into cultivation would probably become waste or jungle, and greatly deteriorated in value.

In Bengal the Courts of Justice, in cases where no specific rule exists, are to act according to justice, equity and good conscience. It should be found that one shareholder is in the act of cultivating a portion of the lands which is not being actually used by another, it would scarcely be consistent to restrain him from proceeding with his work, or to allow any other shareholder to appropriate to himself the fruits of the other's labour or capital.

It was declared that (1) the plaintiffs were entitled to only two-third of 14 annas share in both Patni and maurasi mukarai but (2) not entitled to get joint possession with the defendant No.I, (3) no injunctions could be issued and (4) they were only entitled to recover compensations from defendant No.I in respect of the exclusive use and benefit of the property.

Points decided : (1) The resistance made by the co-sharer in occupation simply with the object of protecting himself in the profitable use of the land, in good husbandry, and not in denial of the other's title, is no ground for proceedings on the part of the other, to obtain a decree for joint possession, or for damages; nor would granting an injunction be the proper remedy.

(2) In cases where no specific rule exists, the Courts of Bengal are to act according to Justice, equity and good conscience.

(3) Where land is held in common between the parties, one of them is in the act of cultivating a part of the land which is not actually used by the other, it is not consistent with the rule to restrain the former from proceeding with his proper cultivation, but money compensation, at a proper rate, in respect of the exclusive use by, and benefit to, the one who, though possessing in common, is carrying on cultivation for himself, not unsuitable in itself, is awarded between the parties.

(4) A deed of dedication may be inoperative in case it is not acted upon.

KRIPA SINDHU MUKERJEE (Plaintiff)

Vs.

ANANDA SUNDARI DEBI (Defendant)

(33 Cal. 34)

Facts of the case : The plaintiff brought this suit against the defendant for the recover of Rs. 89-13 annas for rent and cesses for the year 1308 to 1310 B. S., in respect of a certain jama, and of an additional sum of Rs. 22-7-3 claimed as damages. The defendant pleaded that the rents had been repeatedly tendered kist by kist and on the refusal of the plaintiff's tahsildar to receive them they had been deposited in Court in Chaitra, 1310 B. S.

The Munsif who tried the suit found the defendant's plea to be proved, and holding that the plaintiff had no cause of action dismissed his suit giving him liberty to withdraw the amount deposited in Court.

The plaintiff appealed to the Subordinate Judge, on the ground that he was entitled to interest on the arrears of rent

upto the date of the deposit in Court, but his appeal was dismissed. He then appealed to the High Court of Calcutta.

The appeal was heard by a Divisional Bench which referred the case to a Full Bench. The Full Bench was composed of 5 Judges viz., Rampini A. C. J., Brett J., Mitra J., Woodroffe J., and Mookerjee J.

The points for decision in the order of reference :—Where (1) to stop interest running, a tender of rent, which is improperly refused, must be followed up by a deposit of rent in Court underSection 61 of the Bengal Tenancy Act or (2) such a tender so refused, if kept good, is sufficient to stop interest running from the date of the tender.

Decision :—(1) No. (2) Yes.

Opinion of the Full Bench :—It was argued on behalf of the appellant that tender is not due payment and therefore the rent due has become an arrear which must bear interest unless the tenant avails himself of the provisions of sec. 61. He cited Raja Ranjit Singha's case (7 C. W. N. 720).

It was argued on behalf of the respondents that the deposit was kept good. An arrear of rent is defined by Sec. 54, B. T. Act as an instalment not paid when due; here the tenant paid but the landlord did not receive it; a landlord cannot create an arrear by his own wrongful act. The tenant did everything in his power to extinguish the debt. Under those circumstances there was no arrear within the meaning of Sec. 67 of B. T. Act. The tenant was always ready and willing to pay. He deposited the amount in Court. The landlord's suit for arrears ought to be dismissed though he would be entitled to take the money in deposit. The general law of contract as laid down in Sec. 38 of the Contract Act is that after a valid tender which is refused, the debtor is no longer responsible for any damages and that includes interest. There is nothing in the B. T. Act depriving a debtor for this protection afforded by the general law. Sec. 61 of the Act is only an enabling section; the tenant is not bound to make the deposit.

Their Lordships were of opinion that the depositing of this reference dependent mainly on whether the tender of the rent

made by the defendants was a valid tender and whether it was kept good upto the time of the deposit of the rents in Court when the suit was threatened. The lower Courts found that the tender was a valid tender and that it was kept good. In order to prove that the tender was kept good, it was sufficient to prove that after tender, each instalment was kept in hand by the defendant ready to be paid to the plaintiff on demand. This was in fact proved by the fact that as soon as the suit was threatened the full rents due were tendered, and, on refusal, were deposited in Court prior to the institution of the suit. Authorities is support of this proposition were discussed in full in the judgment of the High Court. (34 Cal. 305). The same principle is embodied in Sec. 38 of the Contract Act.

The contention of the argument for the appellant, that as rent was not deposited after tender, the tenant was not exempt from paying interest, was not sound. Sec. 61 is an enabling section, framed for the benefit of the tenant for the purpose of affording him a method by which he may prove beyond dispute the fact of a tender and its refusal. It is not a mandatory section imposing a penalty for failure to comply with its provisions. Nor can it, being a section framed for the tenant's protection, be taken to deprive him of any right which as a debtor he has under the general law.

The term "arrear" involves the existence of some default on the part of the debtor. In this case it was found that there had been no default by the debtor, who discharged the duty which lay on him to effect a payment. Payment of a debt no doubt requires a tender by the debtor, of the full amount due from him, at the due time and place, to the person to whom it is due, and the acceptance of the same by the latter. If, however, the latter for no good cause refuses to accept the tender of the money or offer to pay, as made in accordance with the law by the debtor, that sum of money cannot afterwards be regarded in law as an arrear for which the debtor is responsible.

On the facts found in the case the tender had on each occasion been made by the defendant and refused by the plaintiff without good cause, and after the tender in each

instance had been kept good, the rent so tendered and refused did not constitute an arrear or rent within the meaning of Sec. 67 of the B. T. Act so as to carry interest against the defendant after the date of tender. It was not necessary for the defendant to follow up his tender by a deposit of the rent in Court under the provisions of sec. 61 of the B. T. Act in order to stop interest from running under Sec. 67 of the same Act.

Therefore Brett. Woodroffe, and Mookerjee JJ. answered the first part of the question referred in the negative and the latter part in the affirmative.

Points decided : (1) To stop interest running, a tender of rent, which is improperly refused, must not be followed up by a deposit of rent in Court under Sec. 61 of the Bengal Tenancy Act.

(2) A tender so refused, if kept good, is sufficient to stop interest running from the date of the tender.

*SRINATH Vs. DINABANDHU SEN

(42 Cal. 489 P. C.)

Facts of the case : The plaintiff, Srinath & others, alleged that they had acquired from Government and had been in possession for many years of a Jalkar Mahal in the Balabanta river, as appurtenant to their zamindary. They also alleged that their right of fishery under the grant was not confined to the land of their zamindary, but extended to all waters within the up stream and down stream limits of the grant. The river is tidal and navigable. In 1897, a channel was broken through the defendant's land. It is of considerable size and is navigable for small craft and is within the ebb and flow of the tide.

The plaintiffs claim the exclusive fishery in this channel as falling within the up stream and down stream limits of their grant. The defendants justify their claim to fish in it, as part of their rights as owners of the subjacent soil.

The suit was decreed by a Sub-judge. The High Court of Calcutta, reversed that decision. Plaintiffs appealed to the Privy Council.

Points for decisions : Whether the plaintiffs could claim an exclusive fishery in the disputed channel as being within the limits of their grant, and whether such grant was proved.

Decision :—It was held by the Privy Council that the plaintiffs had succeeded in establishing the grant of several fishery to them, and that they were entitled to an exclusive fishery in the disputed channel.

Judgment and reasons for decision : The first thing that requires consideration is whether the plaintiffs have established the grant alleged by them. It is no doubt true that the evidence of a Government grant of an exclusive fishery in navigable rivers ought to be conclusive and clear. But in the case of grants more than a century old, as the original grants are in practice but rarely forthcoming, resort must be had to secondary evidence, or to the inference of a legal origin to be drawn from long user. Their Lordships are satisfied that the Government of India, in right of the Crown, did actually grant to the plaintiffs, a Jalkar right of several fishery, in the waters of the river system.

The next point to be considered is the extent of the grant. Their Lordships are of opinion that the plaintiffs have established that the disputed channel falls between the up stream and down stream limits of their grant. The subordinate judge held that the plaintiff's rights in the streams, out of which the new branch opened, were also established, they would extend to the waters of the new branch as soon as it was formed. The defendants contend that this is erroneous.

It must now, however, be taken as decided in Bengal, by a long and considerable body of decisions, that the Government grantee can follow the shifting river, for the enjoyment of his conclusive fishery, so long as the waters form part of the river system, within the up stream and down stream limits of his grant. This is so, whether the Government owns the soil on which the waters flow, or whether the soil belongs to some one else. The origin of the rule is unknown. Probably it rests on

local custom. In spite of occasional doubts, the rule is well-established. It is conveniently called 'the right to follow the river'.

Three points were raised before their Lordships on behalf of the respondents in answer to the rule stated above. Firstly, it was contended that this right to grant a several fishery cannot exist where the grantor never has owned the subjacent soil. This argument is based on English law according to which a several fishery cannot be acquired, if the soil belongs not to the Crown but to a subject. But this rule of English Common Law is the result of conditions, partly historical and partly geographical, which have no counterpart in Lower Bengal. The Indian Courts have in many respects followed the English law of waters. But they have never applied the restriction now contended for. If the rules applicable to the small, slow-running, and comparatively unchanging rivers of England it would be impossible to say, in which part of a river system the grantee is to enjoy his several fishery and in which part he must abstain, on account on the river flowing over the soil of a private owner. Their Lordships are not prepared to supersede the Indian rule on this point, which is not manifestly unjust or in-expedient.

Secondly, it was urged that the rules with regard to alluvion should be applied to rights of Jalkar; that since the right to accretion of soil attached only to gradual accretions, so too the right of the owner of the fishery to follow the river, ought to be limited to the cases where the river's encroachments were gradual, and ought not to be extended to a sudden and rapid irruption. But the analogy is not pari materia. Property in the soil is one thing; enjoyment of a profit a Prendre in flowing water is another. The fish follows the river and the fisherman follows the fish; this may be right or wrong, but the question is not settled by enquiring into the circumstances under which the ownership of dry land is transferred by the physical change of the river. Moreover the law as to accretion of land represents rather a compromise than on ideal of justice.

Lastly, it has been argued that it is unjust that a land-owner should not only lose the use of his land when the river overflows it but also the right to fish over his own acres and in his own waters. But would it be less unjust to deprive the grantee of the Jalkar of his right to fish in the waters of the river, when that river merely shifts its course? Why should the former be allowed to take in substitution of his lost land an incorporeal right belonging to another? Whichever of these rules be followed, there must be hardship on one or other of the parties. That being so, the established rule should not be set aside. The appeal must therefore be allowed.

Points decided : (1) The evidence of a Government grant of an exclusive fishery in navigable waters ought to be conclusive and clear.

(2) In the case of ancient grants, where the originals are rarely forthcoming, resort must be had to secondly evidence or to the inference of a legal origin to be drawn from long user.

(3) The Government grantee of exclusive fishery in a tidal navigable river can follow the shifting river so long as the waters form part of the river system, within the up-stream and down-stream limits of his grant.

(4) The right to follow the river ought not to be limited to cases of gradual encroachment, on the analogy of alluvial accretion of land.

(5) The rules applicable to the small, slow-running and comparatively unchanging rivers of England, should not be applied to supersede the established law of Indian waters.

Note :—A several fishery is a right to take fish from waters covering land which does not belong to the person who has the right. He has the right to exclude the owner of the soil from the right of taking fish himself. It is an extra-territorial right, as it is irrespective of the ownership of the soil over which the water flows and fish swims. It is also sometimes called a free fishery.

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* PAUL Vs. ROBSON

(41 I. A. 180; 42 Cal. 46 P. C)

Facts of the case : The appellants sued the respondents for infringement of certain right of light possessed by them, in connection with premises knows as 7, Esplanade East, Calcutta, of which they were the owners. The respondents had erected a building known as 8, Esplanade East, lying to the east of the appellants' premises and so situated that the western walls of their buildings were parallel to and at a distance of 17 feet from the eastern walls of the appellants' building. The respondents' ground had, for more than twenty years previously, been occupied by much lower buildings, and the appellants had thereby acquired rights of light for the windows on their eastern wall. The new buildings of the respondents greatly exceeded in height the former buildings upon the site, and decreased the amount of light coming to the eastern windows of the appellants.

The suit was tried by Stephen, J., sitting on the original side of the High Court of Calcutta. He found that no actionable nuisance had been proved as the quantity of light left was sufficient for odinary user; and taking the opinion of Lord Davey pronounced in Colls Vs. The Home & Colonial Stores, as the law applicable to the case, he dismissed the suit. This judgment was, on appeal, affirmed by Jenkins, C. J. and Woodroffe, J., Plaintiffs appealed to the Privy Council.

Point for decision : Does the enjoyment of light for a period of 20 years, create an indefeasible right to the enjoyment of a like amount of light in the future?

Decision :—It was held by the Privy Council that in order that an interference of light might be actionable it must amount to a nuisance, the amplitude of previous enjoyment being no measure of the rights acquired.

Judgment and reasons for decision : The question for determination in this appeal is, whether the Courts in India have taken the proper view of the legal rights of the plaintiff

and whether the test which they applied as to whether those rights have been infringed was the correct one. This really turns upon the interpretation to be given to the wellknown decision of the House of Lords in Colls' case, when considered along with the later decision of the House in Jolly Vs. Kine.

Prior to the decision in Colls' case, there was one stream of authorities in favour of the view that enjoyment of light for 20 years created an indefeasible right to the enjoyment of a like amount of light in the future. The conflicting stream of authorities countenanced the view that nothing constituted an infringement of rights of light which did not amount to an actionable nuisance, so that the amplitude of previous enjoyment was no measure of the rights acquired thereby. In Colls' case the intention of the noble Lords was to decide between these conflicting views and they accepted the second view as correct.

In that case Lord Davey expressed the following opinion : "The owner of the dominant tenement is entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement, according to the ordinary nations of mankind. The single question in these cases is still what it was in the days of Lord Hardwicke and Lord Eldon—whether the obstruction complained of is a nuisance?" The other noble Lords who took part in the decision adopted the formulation of the law given by Lord Davey.

That this was the actual decision in Colls' case, is clear from a consideration of the later House of Lords case of Jolly Vs. Kine. It is true that in this latter case the noble Lords were equally divided. But this division of opinion was not due to any doubt as to the law to be applied. All the noble Lords accepted the law laid down by Lord Deavy in Colls' case.

Stephen, J., has based his decision expressly on the opinion of Lord Davey. The Court of Appeal has also taken the same test. They were right and this appeal must be dismissed.

Points decided : (1) The easement acquired by ancient light is not measured by the amount of light enjoyed during the period of prescription.

(2) Nothing constitutes an infringement of rights of light which does not amount to an actionable nuisance.

RAM LAL DUTT Vs. DHIRENDRA NATH ROY

(70 I. A. 18; 47 C. W. N. 489)

Facts of the case : The predecessors of the respondents granted a permanent tenure to the predecessor of the appellant of 822 bighas of land at a lump rent of Rs.957 in the year 1875. In 1906, it was found during the cadastral survey that some tenants in possession of land within the tenure were paying rent, not to the appellant but to the respondents. He was therefore kept out of possession of the area held by these tenants by the respondent landlords. The full rent of Rs. 957 however was all along paid by him till 1928. But when in 1931, the landlords brought this suit for arrears of the rent, he pleaded suspension of rent on the ground of dispossession by the landlords.

The Trial Court and the lower Appellate Court upheld this defence. On appeal by the landlords, the High Court held that the tenant was not entitled to suspension of the entire rent, but only to proportionate abatement of rent, and remanded the suit for determination of the amount of abatement. The tenant appealed to the Privy Council which dismissed the appeal.

Point for decision : If a landlord of agrarian lands in Bengal fails to give his tenant possession of the entire area demised, does the entire rent remain suspended?

Decision : No.

Judgment and reasons for decision : The doctrine of suspension of rent on eviction of the tenant is a rule of English Common Law. If the eviction is by title paramount, there is a proportionate abatement of rent. But if it is by the lessor, the entire rent remains suspended, even if the eviction is as to a small part. This rule has been applied in many cases in Bengal since 1869.

The applicability of the rule in Bengal has however been challenged by eminent jurists. Decisions of Courts in Bengal disclose a state of considerable perplexity. Some judges have tried to avoid what they believed to be the injustice of the rule, by drawing a distinction between lump rent and rent at so much per bigha. Others distinguish between cases of failure to give possession and cases of subsequent dispossession.

The rule may be applied to India only as a rule of 'justice, equity and good conscience.' It is doubtful whether it can be so applied at all to agrarian tenancies in Bengal, often without definite boundary marks. At least, in a case like the present, a case of initial failure to give possession of the entire area, where the tenant has been paying full rent for 50 years without protest, the doctrine should not be applied.

This appeal by the tenant must therefore be dismissed.

Points decided : 1. The doctrine of suspension of entire rent should not be applied in Bengal in cases of failure by the lessor to give possession of a part of the land demised.

2. A landlord in agrarian areas in Bengal, is entitled to get proportionate rent for the land, of which he has given possession to the tenant, event if it is a lump rent, and even if the landlord cannot show that he was unable to give possession of the whole.

*NARAYAN DAS KHETTRY (Plantiff-Appellant) Vs. JATINDRA NATH ROY CHOUDHURY & OTHERS

(31 C. W. N. 965, 54 CAL. 669)

Facts of the case : The father of the infant respondents was proprietor of a holding on which he built a substantial dwelling house. The property was sold under the provisions of Act XI of 1859 for failure to pay the revenue and was purchased by the plaintiff appellant.

The sale certificate was issued to the plaintiff by the Collector of 24-Parganas on the 5th July, 1920. Proceedings were subsequently taken for the acquisition of the property for public purposes and the Deputy Collector awarded a sum of Rs. 2,181 for the land and Rs. 12,388 for the house standing on

it. The appellant claimed the entire amount of the award. The Collector decided that it was necessary for the plaintiff to produce an order of a competent Court before the money could be paid to him. Accordingly the plaintiff instituted this suit in the Court of the Subordinate Judge of the 24-Parganas for a declaration of his right, title and interest to the holding in question and to the whole of the compensation money. The suit was decreed in favour of the plaintiff but on appeal the High Court of Calcutta reversed the decision and decided that the defendants were entitled to the sum awarded in respect of the building less a deduction for the use of the plaintiff's land. The plaintiff appealed to the Privy Council.

The point for decision :—(1) Whether title to the building did pass to the plaintiff by reason of his purchase of the holding at a revenue sale under Act XI of 1859, upon which there was a building and (2) whether the defendants were entitled to the compensation money awarded for the building and if so, what portion of such money.

Decision : (1) No. (2) Yes.

The judgment and reasons for decision : High Court decided that the defendants were entitled to the whole amount awarded for the building, less a sum of Rs. 2,300 as compensation to the plaintiff at the rate of Rs.100 per month for the use of the plaintiff's land upto the date when the Collector took possession of the premises.

The first question was whether title to the building did pass to the plaintiff by reason of his purchase at the revenue auction sale. It was argued on behalf of the defendants that as the sale in question was under the Act XI of 1859, it was merely a sale by the Collector of the Government's interest and reliance had been made in Maharaj Surja Kanta Achariya Bahadur Vs. Sarat Chandra Roy Choudhury (18 C. W. N. 1281) decided by the Judicial Committee. It was held in this case that on the failure of an owner to pay the Government assessment, his estate or interest in the land was forfeited and that by a sale held under Act XI of 1859, what was sold was not the interest of the defaulting owner, but the interest of the Crown, subject to the payment of the Government assessment. It was therefore necessary to ascertain what was the interest of the Crown which was subject to the Government assessment.

There is no definition of the word 'estate' in Act XI of 1859, but according to the Bengal Act VII of 1868 which is to be read with and taken as part of the said Act of 1859, the word "estate" means any land or share in land subject to the Government of an annual sum in respect of which the name of a proprietor is entered on the Register known as the General Register of all revenue-paying Estates, or in respect of which a separate account may in pursuance of Section 10 or Section 11 of Act XI of 1859, have been opened.

It was argued on behalf of the defendants that it was the land so entered on the register, and not the building on the land, which was subject to the payment of the Government revenue and which passed to purchaser at the auction sale held under the provisions of Act XI of 1859. Their Lordships accepted the contention of the defendant and agreed with the conclusion of the High Court that the ownership of the building did not pass to the plaintiff by reason of the revenue sale.

Next question arose whether the defendants were entitled to the compensation money which was awarded in respect of the building or if so, to what portion of such money. Their Lordships were not prepared to adopt the basis on which the learned judges of the High Court acted in this respect. Their Lordshipls were of opinion that, in order to arrive at a decision on this part of the case, it is necessary to consider what would have been the position and the respective rights of the parties after the sale, if no acquisition had taken place under the Land Acquisition Act. After the sale plaintiff would have been the owner of the land and the defendants would have been the owners of the house.

The plaintiff would have had the right to call upon the defendants to remove the house. If they did remove the house, the value to them would be small and in the ordinary course

would be no more than what has been called "demolition value", viz., the value of the materials less the cost of removal and if they did not remove the house they would lose it.

There was, however; the possibility that if the land had not been acquired under the Land Acquisition Act, the owner of the land would not have desired the removal of the house and he might have been willing to pay to the defendants (the owner of the hosue) more than the mere demolition value of the house.

It was also to be taken in consideration that if the defendants were called upon to remove the house they would be entitled to a reasonable time for such removal, and that during such time the plaintiff would be kept out of enjoyment of the land.

The result was that the appeal was allowed and remanded to the learned Subordinate Judge to decide to what portion of Rs.12,388, the defendants are entitled, having regard to the matters which are mentioned in the judgment.

Points decided : (1) By the sale of an "estate in arrear" under Act XI of 1859, what passes is not the interest of the defaulting owner but the interest of the Government subject to the payment of the government revenue.

(2) The rule "amue quod inadificatur sole cedit" (accessory falls to the principal) is not applicable to property passing under revenue sale.

(3) The owner of the building is entitled to remove it or to get its demolition value.

AZIM SIRDAR AND OTHERS (Defendants-Appellants)

Vs.

RAMLAL SHAHA AND OTHERS (Plaintiffs-Respondents)

(I. L. R. 25 CAL. 324)

Facts of the case : A suit was brought by the plantiffs in the Court of Munsif of Kushtia against a tenant for the entire rent making the co-sharer landlords also defendants to the suit. The defence of the tenant-defendant No.I, was denial of relationship of landlord and tenant, and payment to the co-sharer landlord. The co-sharer landlords inter alia pleaded that, as the tenant, defendant was settled on the land by them at a time when they were claiming to be entitled exclusively to the possession thereof, under a title derived from their auction-purchase, they must be taken to have been trespassers on the land, so far as the plaintiffs' 7 annas share was concerned, and that consequently defendant No.1, who was settled on the land by them, must also be treated as a trespasser as against the plaintiffs.

The Munsif held that the relation of landlord and tenant between the plaintiffs and the defendant No.1 had been made out. But he dismissed the plaintiffs' suit on the ground that the tenant-defendant had paid all that was payable by him to the defendants Nos. 2 and 3; and that the plaintiffs were not entitled to recover anything from the tenant-defandant, nor anything from the defendants Nos. 2 and 3 in a suit for arrears of rent. Against this decision the plaintiffs appealed to the District Judge of Nadia. He hedl that the Munsif was wrong in holding that payment to the defendants Nos. 2 and 3 was sufficient to discharge the tenant-defendants from liability to the plaintiffs, and he accordingly gave the plaintiffs a decree for the rent due to them on account of their share. Against that decree of the District Judge, the second appeal had been preferred jointly by the tenant-defendant and the co-sharer defendants in the High Court of Calcutta.

The point for determination : Whether (1) there was any relationship of landlord and tenant between the plaintiffs and the defendant No.1, and (2) payment to the defendants Nos. 2 and 3 was sufficient to discharge the defendant No.1 from liability to the plaintiffs.

Decision : It was held that (1) the defendant No.1 could not be treated as a trespasser as against the plaintiffs and the plaintiffs are entitled to claim rent for use and occupation from the defendant No.1, and (2) the payment to the co-sharer landlords, defendants Nos. 2 and 3, was not sufficient to discharge the defendant No.1 from liability to the plaintiffs.

Judgment and reasons for decision : Firstly, it was contended on behalf of the appellants that as the tenant-defendant was settled on the land by defendants Nos. 2 and 3 at a time when they were claiming to be entitled exclusively, to the possession thereof, under a title derived from their auction purchase, the defendants Nos. 2 and 3 must be taken to have been trespassers on the land, so far as the plaintiffs' 7 anas share was concerned, and that consequently the defendant No.1, who was settled on the land by them, must also be treated as a trespasser as against the plaintiffs and not as their tenant. Their Lordships were of opinion that their was no force in this contention. Tenancy in this country is created not only by contract but also by occupation of land, so far as agricultural lands are concerned. Concurring with the judgment in Binad Lal Pakrashi Vs. Kalu Pramanik (I. L. R. 20 Cal. 708), it followed that the plaintiffs were incompetent to treat the defendant No.1 as a trespasser and to eject him. That being so they must be entitled to claim as against him rent for use and occupation.

Secondly, it was argued on behalf of the appellants that the payment to the defendants Nos. 2 and 3 was sufficient to discharge the defendant No.1 from liability to the plaintiffs. Reliance was made upon the judgment of Ahamudeen Vs. Grish Chunder Shamunt (I. L. R. 4 Cal. 350). In the present case that fact is wholly wanting. Notice was given to the defendant No.1 by the plaintiffs after they had recovered their decree against the defendants Nos. 2 and 3, declaring their rights, that they had acquired a right to a 7 annas share of the land; and if in spite of such notice the tenant continued to pay rent to the defendants Nos. 2 and 3 who had previously been in receipt of rent, not as some of the co-sharers, but as persons claiming to be the exclusive landlords, such payment by the tenant must be taken to have been made at his risk, and cannot exonerate him from liability to the plaintiffs' claim.

In the circumstances the appeal was dismissed with cost.

Points decided : (1) When a tenant enters in use and occupation of the land under a bona fide belief of the title of his landlord, he cannot be treated as a trespasser by the true owner subsequently.

(2) The payment to co-sharer landlord was not sufficient to discharge the tenant from liability to pay rent to another co-sharer landlord.

***BINAD LAL PAKRASHI & OTHERS (Plantiffs-Appellants)**

Vs.

KALU PRAMANIK & OTHERS (Defendants-Respondents)

Facts of the case : The plaintiffs were the proprietors of a certain village and they brought this suit to oust the defendants from certain lands which they were cultivating in the village.

Some years ago there was a dispute regarding these lands between the plaintiffs and the trustees of the Late Dwarka Nath Tagore, who claimed them as the re-formed lands and the plaintiffs were dispossed of the lands in consequence of an order of the Magistrate who, in a proceeding under Section 145 of the Criminal Procedure Code, declared possession to be with the trustees (hereinafter called the Tagores). The defendants were then settled on the land by the Tagores but they had not acquired a right of occupancy at the time these suits were brought in January, 1889. Meanwhile in 1878, the plaintiffs had sued the Tagores for possession of these lands and obtained decrees. On 27th January, 1886, the plaintiffs took possession of the lands as against the Tagores, and they brought this suit to eject as trespassers the defendants, who were holding the lands as tenants of the Tagores. The plaintiffs had not received rent from the defendants or in any way admitted their tenancy.

The Munsif decreed the suit in favour of the plaintiffs but on appeal the District Judge of Bogra reversed the decree on the authority of Mohima Chunder Shaha Vs. Hazari Pramanik (I. L. R. 17 Cal.45). The plaintiffs appealed to the High Court of Calcutta. This appeal was referred to a full Bench for decision.

The point for decision : Whether the defendants were protected by anything in the Bengal Tenancy Act from eviction as trespassers, at the suit of the plaintiffs.

Decision : It was held that the defendants were non-occupancy raiyats within the meaning of Section 5, sub-sec. 2 of the Bengal Tenancy Act and were protected from ejectment by that Act and could be ejected order under the provisions of the Bengal Tenancy Act.

Opinion of the Full Bench : It was argued on behalf of the appellants that the word "raiyat" has not the same meaning as tenants. The different classes of tenants are defined in the B. T. Act. The defendants were not tenants of the plantiffs; they were under no liability to pay rent; they derived their title from a wrong-doer; there was no contract between them and the plaintiffs, either express or implied. The plaintiffs were entitled to be governed by the old Tenancy Law, as the right to sue accrued before the new Act (B. T. Act, 1885) came into force. The case ought not to be governed by the B. T. Act of 1885. If the cause of action arose before the Act, the plaintiffs were entitled to succeed. But if the Act of 1885 applies, the tenant means a person holding under another; the relationship between landlord and tenant cannot exist without a mutual understanding.

It was argued on behalf of the respondents that if the defendants were raiyats having rights of occupancy, they could not be ejected. Under the old law there was no definition of the word "raiyat". The present Act has made many changes granting indulgences to raiyats. The words "acquired a right" in Section 5 of B. T. Act, 1885, do not mean a right from a rightful owner only. It cannot be said that the Tenancy Act has retrospective operation.

Their Lordships were of opinion that the case of Mohima Chunder Shaha Vs. Hazari Pramanik was rightly decided, and it was held in this case that a person who entered on land as raiyat and tenant of a trespasser, and who had not acquired a right of occupancy, was a "non-occupancy raiyat" within the meaning of the B. T. Act VIII of 1885, and could not be ejected

as a trespasser by the true owner when he recovered possession of the estate. The possession of the land in question for his purpose of cultivating it was acquired many years ago by the defendants from the persons who at that time were in actual possession of the zamindari within which it was situated, and who were then the only persons who could give possession of the lands of the zamindar to cultivators.

Section 5, Sub-section 2, of the B. T. Act enacts that "raiyat" means primarily a person who had acquired a right to hold land for the purpose of cultivating it. The use of the word "primarily" in this section would seem to indicate that the definition was not intended to be exhaustive, and a person in the position of these defendants was a raiyat within this definition. The zamindar could only obtain khas possession of the land occupied by him under the provisions of Section 44, the raiyat having non-occupancy rights. This was a right to hold the land for the purpose of cultivating it within the meaning of Section 5, Cl. 2. It may have been partial, but if it is a right at all, it is within the definition in the Section: provided of course, it was a right bona fide acquired by them from one whom they bona fide believed to have the right to let them into possession of the land. The defendants were raiyats and the only right of the person who obtained possession of the zamindari is to the rent payable for the land, and not to obtain khas possession of the land itself, unless they can do so under the provisions of the Tenancy Act. The answer to the question referred to this Bench was in the affirmative.

Points decided : (1) A person having previously to the passing of the B. T. Act, been settled on certain land as a raiyat and tenant by a trespasser, and having acquired no right of occupancy at the time of suit for ejectment by the true owner after obtaining possession of the land from trespasser, is a non-occupancy raiyat within the meaning of Section 5, sub-section 2, of the B. T. Act and is protected from ejectment by that Act and the true owner can only obtain khas possession of the land under the provisions of Section 44.

(2) It was a right bona fide acquired by a tenant from one whom he bona fide believes to have the right to let him into possession of the land.

JUGDEO NARAIN SINGH Vs. BALDEO SINGH

(49 I. A. 399; 37 C. W. N. 925)

Facts of the case : The appellants brought this suit against the respondents for a declaration that the latter had no rent free title to certain lands lying within the revenue paying estate of the appellants. The respondents could not prove any grant of a rent free title. But they relied upon (1) non-payment of rent for long years and (2) statements in registers of the Thakbast survey about the year 1840 and (3) entry in the record of rights prepared under the Bengal Tenancy Act.

The Subordinate Judge of Patna decreed the suit, holding that the respondents had no rent free title. This decision was affirmed by the District Judge. The High Court of Patna reversed their decision and dismissed the suit. The plaintiffs appealed to the Privy Council which allowed the appeal.

Point for decision : Have the defendants succeeded in proving a rent free title?

Decision : No.

Judgment and reasons for decision : Mere non-payment of rent has not by itself been held to India to create a rent free title by adverse possession. The respondents must therefore prove such title by other evidence. The statement contained in the Thakbast survey register has no evidentiary value against the Zamindar, in the absence of evidence in show that he acquiesced in it. As to the entry in the record of rights prepared under the Bengal Tenancy Act. It is true that under section 103-B of the Act, it must be pressumed to be correct until the contrary is shown. Once however the Zamindar proves, as they have done in this case, that the land lies within his regularly assessed mahal, the presumption is rebutted.

The respondents have failed to prove by any other evidence that they have a rent free title, either by contract or by any old grant recognised by the Government. The appeal must therefore be allowed and the suit decreased.

Points decided : (1) Where land lying within a regularly assessed revenue paying estate is claimed to be held rent free, the onus is upon the person so claiming to prove it.

(2) In India, a rent free title is not acquired by adverse possession by a tenant not paying any rent for long years.

(3) Entries made in that survey khasras have no evidentiary value against a person unless they are proved to have been acquiesced in by him.

*RANJIT KUMAR RAY & OTHERS (Plaintiffs-Appellants)

Vs.

SM. KALAMJAN BIBI & OTHERS (Respondents)

(52 C.W. N. 530)

Facts of the case : Some of the respondents and their predecessors, who were occupancy raiyats, had borrowed Rs.3,000 from the mother of the appellants on a mortgage by conditional sale of their holding, executed in her favour on 9th February, 1927. Possession was delivered to the mortgagee and she was under the mortgage bond entitled to the usufruct in satisfaction of interest. Interest was thus realised, but the principal was still due, though according to the mortgage deed it had to be repaid by April, 1928. The plaintiffs-appellants filed a suit in 1940 for foreclosure in the court of the Subordinate Judge of Dhaka. The defence inter alia was that the suit was barred under Section 26G of the B. T. Act. The Subordinate Judge dismissed the suit. The appellants preferred an appeal before the District Judge of Dhaka who agreeing with the tyrial court dismissed the appeal. The appellants preferred further appeal in the High Court of Calcutta in 1943. The appeal was decided by Akram, C.J. and Shahabuddin, J. of the Dhaka High Court on the 15th December, 1947.

The point for determination : Whether the plaintiffs were entitled to get a decree for foreclosure of a mortgage by conditional sale where possession was delivered to them on the face of Section 26G of the B. T. Act.

Decision : It was held that the suit must fail under Sub-section (1) (a) of Section 26G of the B. T. Act as amended in 1940 during the pendency of the suit, the amendment being retrospective in operation.

Judgement and reason for decision : Sub-Section (5) of section 26G, on which the Courts below relies, provides that a complete usufructuary mortgage or another form of usufructuary mortgage deemed under Sub-section (1) (a) to be a complete usufructuary mortgage on the expiry of the period fixed in the instrument, or of 15 years from its registration, whichever is less, shall be deemed to have extinguished and that the mortgagor thereafter may apply to the Court to be restored to possession.

It was contended on behalf of the appellants that this provision does not apply to mortgages by conditional sale with possession. According to their Lordships this contention must prevail. There is no reference in this Sub-section to mortgages by conditional sale with possession. They do not come under "Complete usufructuary mortgages". The fact that specific reference has been made to them in Sub-section (1) (a) indicates that the legislature, while amending the Section in 1940, treated them as a distinct class of mortgages; and yet, Sub-section (5) was not amended so as to include them. This Sub-section does not apply to the mortgage in question.

This conclusion, however, does not help the appellants, because, as contended on behalf of the respondents, the suit, must fail in view of Sub-Section (1) (a). Under this Sub-section, as amended by the amending Act of 1940, every mortgage including a mortgage by conditional sale, executed before 1929 and subsisting on or after 1st August, 1937, is to be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument, or for 15 years, whichever is less, if possession has been delivered to

the mortgagee. A complete usufructuary mortgage as defined in the Act is a mortgage under which both the loan and the interest are extinguished by the profits arising from the property during the period of mortgage. The effect of these provisions read together is that a mortgage with possession mentioned in Sub-section (1) (a) shall be deemed to have been extinguished at the end of the period mentioned in the bond or after 15 years. It was argued on behalf of the appellants that Sub-section (1) (a) as amended by the Act of 1940 does not apply, as this suit was pending when the amendment came into force. But their Lordships are unable to accept this contention. Sub-section (1) (a) is intended to have retrospective action. Under it even mortgages executed before the Act of 1928 are effected provided they were subsisting on or after 1st of August, 1937. This Sub-section is applicable to this case.

The next contention of the appellants is that effect cannot be given to sub-section (1) (a) in view of Sub-section (8), which gives the mortgagee the right of suing after 15 years for a declaration that the mortgage has not been extinguished and that, therefore, the suit should have been decreed. This argument is based on the assumption that Sub-section (8) overrides Sub-section (1) (a). But these provisions are independent of each other, as indicated by their opening words, and one cannot be said to override the other. Even if it is considered that Sub-section (8) overrides Sub-section (1) (a), the mortgagee has only the right to sue for declaration that the mortgage has not been extinguished and not the right to foreclose. The suit is based on the terms of the mortgage bond, under which the usufruct is to be taken in satisfaction of interest only and on the mortgagor's failure to pay the principal the mortgagee would be entitled to the land. But in a suit under Sub-section (8) (b) the usufruct has to be taken to satisfy both the principal and interest and the utmost the mortgagee can get, is a decree entitling him to retain possession for a period to be fixed, having regard to the amount found due, and after that period possession goes back to the mortgagor.

In the circumstances the appeal is dismissed with costs.

Points decided ; (1) A suit for foreclosure does not lie of a mortgage by conditional sale with possession under Sub-section (1) (a) of Section 26G of the B. T. Act as amended in 1940 during the pendency of the suit, the amendment being retrospective in operation.

(2) Sub-section (5) does not apply to the mortgage by conditional sale, as that sub-section does not refer to mortgages by conditional sale with possession which the legislature has treated as a distinct class in Sub-section (1) (a).

(3) Sub-section (8) does not override Sub-section (1) (a). These provisions are independent of each other is in indicated by their opening words and there is no real repugnancy between the two Sub-sections, the extinction under Sub-section (1) (a) being a mere legal fiction.

(4) A suit for foreclosure by a mortgagee cannot be regarded as a suit under Sub-section (8) (b) of Section 26G of the B. T. Act and the Court has no power in a foreclosure suit to make a declaration that the mortgagor is entitled to possession.

Land Laws of Bangladesh

Vol.II

The Bengal Tenancy Act, 1885

CONTENTS

CHAPTER —I
Preliminary

CHAPTER —II
Classes of Tenants

CHAPTER —III
Tenure-Holders

Enhancement of Rent

Other incidents of tenures

CHAPTER—VI

Non-occupancy-raiyats

CHAPTER— VII

Under-raiyats.

CHAPTER —VIIA

Restrictions on alienation of land by aboriginals

CHAPTER —VIII

General provisions as to Rent.

Rules and presumptions as to amount of rent

Alteration of rent on alteration of area

Payment of rent.

Receipts and accounts.

Deposit of rent.

Suspension of provisions relating to enhancement of rent.

CHAPTER —IX

Miscellaneous provisions as to landlords and tenants.

Improvement

Measurements.

CHAPTER —X

Record-of-Rights and Settlement of Rents.

Part I. — Record-of-rights

Part II.– Settlement of rents, etc.

Part III.—Settlement of rents etc.

CHAPTER —XI

Non-accural of occupancy and non-occupancy rights and record of Proprietor's private lands.

CHAPTER —XII

Distraint.

CHAPTER —XIII

Judicial Procedure

CHAPTER -XIII-A

Summary Procedure for the recovery of rents under the Public Demands Recovery Act, 1913

CHAPTER -XIV

Sale for arrears under decree.

CHAPTER -XV

Contract And Custom

CHAPTER -XVI

Limitation

CHAPTER -XVII

Supplemental.

Penalties.

Damages for denial of landlord's title.

TABLE OF CASES

CITATIONS & ABBREVIATIONS

A.I.R. Cal. — All India Reporter, Calcutta.
A.I.R. Pat.— All India Reporter, Patna.
C. L. J. — Calcutta Law Journal.
C. W. N. — Calcutta Weekly Notes.
D. L. R. — Dhaka Law Reports.
I. C. — Indian Cases.
I. L. R. Cal. — Indian Law Reports, Calcutta Series.
I. L. R. Pat. — Indian Law Reports, Patna Series.
M. I. A. — Moore's Indian Appeals.
P. L. R. (Dhaka) — Pakistan Law Reports, Dacca Series.
W. R. (C. R.)— Sutherland's Weekly Report.

The East Pakistan Ordinance No. LXXI of 1959 provided a new rule for appropriation of rent in section 55 of the Act.

Lastly, section 168A was amended by the East Pakistan Ordinance No.X of 1962 providing that the purchaser of a tenure or holding, sold for arrears of rent, was liable to pay the deficiency between the purchase price and the amount due under the decree or certificate and the sale would not be confirmed unless the sum was deposited.

The Bengal Tenancy Act,1885 was repealed by the East Bengal State Acquisition and Tenancy Act, 1950 (E. B. Act 28 of 1951). We propose to discuss its provisions is the third volume.

THE BENGAL TENANCY ACT, 1885

ACT VIII OF 1885

(14th March, 1885)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Whereas it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal, it is hereby enacted as follows :-

CHAPTER —I

Preliminary

1. (I) **Short title** :—The Act may be called the Bengal Tenancy Act, 1885.

(2) **Commencement.**—It shall come into force on such date (hereinafter called the commencement of this Act) as the Provincial Government, with the previous sanction of the Central Government, may, by notification in the Official Gazette, appoint in this behalf.

(3) **Local extent**—It extends by its own operation to the whole of East Bengal, except—

(i) the district of Sylhet;

(ii) this sub-caluse was omitted by notification No.317-L. dated 5th April, 1950;

(iii) any area constituted a municipality under the provision of the Bengal Municipal Act. 1932, or part thereof, if such area or part is specified in a notification made in this behalf by the Provincial Government.

Provided that a notification under this clause shall be no bar to the operation of the Act in respect of agricultural lands situated within the area specified in such notification; and

(iv) the Scheduled Districts specified in the Part III of the First Schedule to the Scheduled Districts Act, 1874;

Provided that no notification shall be issued under clause, (iii) of this sub-section, unless —

(a) it is previously published in the area concerned or part thereof in the prescribed manner; and

(b) the Provincial Legislature by a resolution recommended that the notification be issued.

Note—The preamble of the Act shows that the Act was intended to amend and consolidate not the entire law of land-lord and tenant but only certain enactments relating to that law. The Act was neither a complete Code nor exhaustive. [1]Firstly, there were various laws to which the Bengal Tenancy Act was not applicable, and as such they were not affected by it. Secondly, there are instances in the Act in which the incidents of tenancy were not exhaustively enumerated. For instance, the Act nowhere purported to give an exhaustive enumeration of all the incidents of the occupancy right. Similarly, neither the definition of tenure-holder nor the definition of raiyat in section 5 was exhaustive. [2]So also section 52 was not exhaustive. Thus, in a suit for abatement of rent on the ground of diluvion the tenant was entitled to relief though he could not prove what the rent was at the inception of the tenancy or what the area was at the time when the rent was assessed or adjusted. [3]

On the other hand the Act dealt with the "Law of land-lord and Tenant", but it did not define the classes of leases to which it applied. The general law of landlord and tenant is contained in Chapter V of the Transfer of Property Act, 1882; but section 117 of that act makes the provisions of Chapter V inapplicable to leases for agricultural purposes. Local laws were, therefore, enacted in respect of leases for agricultural purposes to suit the varying conditions of the different

1. Chandra Benode v. Ala Bux (1920) I. L. R. 48 Cal. 184 at 244 (S.B.).
2. Mahesh v. Manbharan (1901) 5 C. L. J. 522.
3. Bireswar v. Jagendra (1929) 49 C. L. J. 270.

provinces. The Bengal Tenancy Act, 1885 was one of the local laws enacted for the province of Bengal.

It was established that it was not the nature of the land but the purposes for which the tenancy was created that determined whether the Transfer of Property Act, 1882, or the Bengal Tenancy Act, 1885, applied.[1]The land must be agricultural and the purpose of the tenancy must also be agricultural.

It follows, therefore, that where the tenancy was shown to have been created for residential purposes, user of the land for agricultural purposes would not bring the tenancy under the Bengal Tenancy Act.[2] On the other hand, where a tenancy was created for agricultural purposes, a sub-tenancy carved out of it would, in the absence of anything else, be governed by the Bengal Tenancy Act, even though the sub-tenancy might be for non-agricultural purpose. [3]

2. Repeal of enactments—(1) The enactments specified in Schedule 1 hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(3) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. Definitions—In this Act, unless there is something repugnant in the subject or context—

(1) **"Agricultural year"** means the Bengali year commencing on the first day of Baisakh :

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any other year has prevailed for agricultural purposes that year

1. Alauddin v. Tamizuddin (1937) 41C.W.N. 1001 at 1004.
2. Radhanath v. Krishna (1935) 40 C. W. N. 722.
3. Pankajini v. Satish (1935) 40 C.W.N. 86; Arun V. Durga (1941) 45 C. W. N. 805.

shall continue to prevail for those purposes until the first day of Baisakh next following the date of the commencement of that Act.

(2) **"Collector"** means the Collector of a district or any other officer appointed by the Provincial Government to discharge any of the functions of a Collector under this Act.

(3) **"Complete usufructuary mortgage"** means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

Note.—This definition was inserted by the Amending Act of 1928. An "usufructuary mortgage" is one in which possession of the mortgaged property is delivered to the mortgagee who receive the usufructs or the rents and profits accruing from the property in lieu of interest or in payment of the mortgage-money or partly in lieu of interest and partly in playment of mortgage money. A "complete usufructuary mortgage" as defined in this Act means an usufructuary mortgage in which both the principal and interest are repaid or liquidated from the rents or profits derived from the property within the stipulated period, after which the debt is automatically extinguished and the property comes back to the mortgagor.

(4) **"Estate"** means land including under one entry in any of the general registers of revenue-paying lands and revenue free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes government khas mahals and revenue free lands not entered in any register.

Note.—The term 'estate' includes land included under one entry in the Collector's Registers, khas mahals, and lakhiraj or revenue-free lands not entered in any register. The inclusion of khas mahal in this definition places the tenants of Government estates in the same position as those of the zemindars.

(5) **"Holding"** means a parcel or parcels of land or an undivided share thereof, held by a raiyat or an under-raiyat and forming the subject of a separate tenancy [whether the raiyat or under-raiyat has held the land before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928].

Note.—This definition was substituted by the Amending Act of 1928. Under the original clause, the land held by an under-raiyat was not a holding. So also an undivided share in a parcel or parcels of land was not a holding within the meaning of the Act. Under the Act of 1928 the definition of 'holding' was amended so as to extend it to under-raiyat and also to include an undivided share of a parcel or parcels of land. Prior to the amendment, only an entire parcel of land constituted a holding. But since the amendment, a holding means an entire parcel of land or an undivided share thereof, held by a raiyat or an under-raiyat, and forming the subject of a separate tenancy.

In Bikram v. Rajabali,[1] decided after the amendment of 1928, the High Court held that the amended definition of holding was not retrospective in operation and did not, therefore, apply to holdings created before 1928. To nullify the above decision and to give retrospective operation to the amended definition of 'holding' as inserted in 1928, it was further amended by the Act of 1938 by adding the words 'whether . . . 1928" as shown within bracket. Speaking about the object of the amendment of 1938, the Revenue Minister said :

"The High Court held that the definition of holding which now includes part of a holding does not apply to holdings created before 1928. Just to give retrospective effect to the definition of 'holding' as inserted in 1928 this amendment has been inserted in the Bill".

(6) **"Landlord"** means a person immediately under whom a tenant holds, and includes the Government.

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1. (1929) 33 C.W.N. 1156; Sripati v. Kalidas (1936) 40 C. W. N. 984.

Note—Persons concerned with land may broadly be divided into rent-receivers and rent-payers. The rent receivers are land-lords and rent-payers are tenants. Any person, to whom rent is payable, is a landlord in relation to the person who pays rent to him, though he may himself be a tenant in relation to some third person. A landlord might either be a proprietor or a tenure-holder or a raiyat. A proprietor was the owner of an estate or share of an estate. He could sublet his estate or a share of it to a tenure-holder, in which case he was the landlord of the tenure-holder or he could himself manage his estate, in which case he was the landlord of the raiyat who held land directly under him. Similarly a tenure-holder could sub-let his tenure to a sub-ordinate tenure-holder in which case the former was the landlord of the latter. Or if a tenure holder managed his tenure himself, he was the landlord of the raiyat who held under him. A raiyat, who sub-let his holding or part of it to an under-raiyat, was the landlord of the under-raiyat.

(7) "**Pay**", "**payable**" **and** "**payment**", used with reference to rent, include "deliver", "deliverable" and "delivery".

(8) "**Permanent Settlement**" means the Permanent Settlement of Bengal, made in the year 1793.

(9) "**Permanent tenure**" means a tenure which is heritable and which is not held for a limited time.

(10) "**Prescribed**" means prescribed by rules made by the Provincial Government under this Act.

(11) "**Proprietor**" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

(12) "**Registered**" means registered under any Act for the time begin in force for the registration of documents.

(13) "**Rent**"[1] means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use for occupation of the land held by the tenant.

1. For the history of rent, see author's thesis on the rights and liabilities of the Bengal Raiyats, Chapter 4, Sec.1, hereinafter referred to as Bengal Raiyats.

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XIV and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(14) "**Revenue-Officer**", in any provision of this Act, includes any officer whom the Provincial Government may appoint, by name or by virtue of his office, to discharge any of the functions of a Revenue-Officer under that provision.

(15) "**Signed**" includes "marked", when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(16) "**Succession**" includes both intestate and testamentary succession.

(17) "**Tenant**" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person :

Provided that a person who, under the system generally known as "adhi", "Barga" or "bhag", cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(ii) he has been or is held by a Civil Court to be a tenant.

Note.—The proviso was added by the Amending Act of 1928. Prior to the amendment, there were conflicting decisions as to the statue of a bargadar. If the contract showed that an interest was created in the land in favour of the bargadar, then he would be a tenant; but if it showed that it was a mere labour-contract and the bargadar's share of the produce was the wages of his labour, then he would not be a tenant. Since the amendment, a person, generally known as bargadar, bhagchasi or adhiar who cultivates another person's land on condition of delivering a share of the produce of the land is not ordinarily a tenant and the share of the produce which is deliverable is not ordinarily 'rent' within

the meaning of the Act. But if such a person is held to be a tenant by the Civil Court or is expressly admitted as such by his landlord either in a patta or other document executed by him or in a kabuliat or other document executed in his favour and accepted by him then he will have the status of a tenant under the Act.

The proviso excluded from its operation one class of produce-paying cultivators, viz., the dhankararidars i.e., persons who paid a fixed quantity of produce.[1]

(18) **"Tenure"** means the interest of tenure-holder or an under-tenure-holder.

(19) **"Village"** means the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land revenue survey which has been made of the territories to which this Act extends, or

(b) any survey made by the Government which has been adopted by notification in the Calcutta or Eastern Bengal and Assam Gazette or which may be adopted by notification in the Official Gazette is defining villages for the purposes of this clause in any specified area; and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order declare to constitute a village :

Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the official Gazette, declare that in such local area, estate, tenure or part thereof "village" shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the sanction of the Board of Revenue accorded under the provisions of section 115A as the unit of survey and record.

1. Notes on clause (4) = The Calcutta Gazette, dated July 12, 1928. Part IV, p.97.

CHAPTER —II

Classes of Tenants

[The classification of tenants in sections 4 and 5 was not exhaustive; it was neither intended to be scientific nor precise. The underlying principle of the classification was thus explained by the Rent Law Commission, 1880; "The owner of an estate is termed a 'proprietor'. The interest next below an estate and superior to that of a raiyat, we have defined to be a 'tenure', and the owner of a tenure a 'tenure-holder'. Under a tenure and above the raiyat's interest there was an under-tenure, the owner of which was called an 'under-tenure-holder'. If there were more than one of such middle interests, they were termed under-tenures of the first, second etc., degrees". A raiyat held land either under a zemindar or under a tenure-holder; an under-raiyat held either under a raiyat or under another under-raiyat. The incidents of different classes of raiyats were dealt with in Chapters 4-7.]

4. Classes of tenants. [1]—There shall be, for the purposes of this Act, the following classes of tenants (namely) :—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately, under raiyats;

and the following classes of raiyats (namely) :—

(a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

5. Meaning of "tenure-holder" "raiyat".[2]—(1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land

1. For detailed study, see author's, Bengal Raiyats, Chapter 2. Sec.1
2. For detailed study, see author's Bengal Raiyats, Chapter 2, Sec.-1

for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors-in-interest of persons who have acquired such a right.

(2) **"Raiyat"** means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by servants or labourers or with the aid of partners, and includes also the successors in-interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(a) local custom; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

Note.—The definition of tenure-holder as provided in this section was not exhaustive. The mere fact that a person acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rent was not sufficient to prove that he was a tenure-holder within the meaning of the Act. In had to be proved that the land was let out for agricultural or horticultural purposes. If agricultural or horticultural land was let out for the purpose of collecting rents, the lessee would be a tenure-holder.[1] Similarly the definition of raiyat in sub-section (2) was not exhaustive. There was nothing in the definition which would exclude a

1. Umrao v. Rajabi (1899) I. L. R. 27 Cal. 205.

person who took land for horticultural purposes.[1] It was provided in section 5(3) that a person must not be deemed to be a raiyat unless he held land either immediately under a proprietor or immediately under a tenure-holder. But in the Full Bench Decision in Binodlal v. Kalu,[2] it was held that when a person acquired a right to hold land bona fide from one whom he bona fide believed to have the right to let him into possession of the land, he was a raiyat, although the person, under whom he held was a trespasser.

According to sub-section (2) read with the explanation the test was whether the tenant had the right to bring the land under cultivation, though he might use it for the purpose of grazing cattle.[3] In order to bring a lease for the purpose of grazing within the meaning of the explanation, it was necessary to prove that the grazing was in relation to cultivation which was the primary purpose for which a raiyat acquired the right to hold land. The mere circumstance that a considerable portion of the tenancy was let out for the purpose of grazing was not conclusive upon the question whether the tenant had or had not acquired the status of a raiyat.[4]

It is difficult to distinguish between a tenure-holder and a raiyat specially when the origin of the tenancy was not known or the terms of the document were ambiguous. To obviate such difficulty several tests were provided in the Act. In determining whether a tenant was a tenure-holder or a raiyat, the Court had to consider (a) the local custom, and (b) the purpose for which the right of tenancy was originally acquired. Where the area held by a tenant exceeded one hundred standard bighas, the tenant was presumed to be a tenure-holder until the contrary was shown.[5]

1. Hurry v. Nursingh (1893 I. L. R. 21 Cal. 129; Umrao v. Rajabi (1899) I. L. R. 27 Cal. 205.
2. (1893) I. L. R. 20 Cal. 708 at 713 F. B.
3. Sheikh Latifar v. Forbes (1909) 14 C. W. N. 372 (per Doss, J.)
4. Hedayet v. Kamalanand (1912) 17 C. L. J. 411 at 414.
5. The report of the Select Committee of the Bill of 1884, dated 12th February 1885, para 4; The Bengal Tenancy Act. 1885, Sec.5(4).

The purpose of the tenancy could be gathered, as between the parties, from the basic document, if any. If there was a written lease, which clearly indicated the intention of the parties there was no difficulty in determining the class of the tenancy. But where the terms of a lease creating the tenancy were ambiguous or where there was no written lease and it was not clear what the original purpose of the tenancy was, the Court had to look into the subsequent conduct of the parties and surrounding circumstances to determine the nature of the tenancy.[1] Once however the original grant was clearly shown to be raiyati by a lease unambiguous in its terms, or by other evidence where there was no written lease, the mere fact that the tenants subsequently sublet the land would not alter the character of the tenancy.[2]

The presumption in sub-section (5) was based upon the hypothesis that originally a larger area than 100 bighas would make cultivation by personal agency of the tenant improbable.[3] The presumption was a rebuttable one and did not apply where the term of the original grant were known. It might be rebutted by a kabuliat or by an entry in the record-of-rights.[4]

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1. Promoda v. Asiruddin (1911) 13 C. W. N. 806; Rajani v. Yusuf (1916) 21 C. W. N. 188 at 189.
2. Debendra v. Bibhudhendra (1918) I.L.R.45 Cal. 805(P.C.)
3. Ibid.
4. Jitindra v. Raicharan (1928) 33 C. W. N. 356.

CHAPTER —III

TENURE-HOLDERS

[This Chapter dealt with the rights and liabilities of the highest classes of tenants namely, tenure-holders which included under-tenure-holders. Tenures might be divided into two classes : (a) Permanent tenures which were not held for a limited time; and (b) non-permanent tenures, the term of which was limited. Rents of the two classes of tenures might be fixed, in which case it was obvious, there could be no enhancement of rent, but only additional rent might be assessed for additional area. The rents of the tenures existing from the time of the Permanent Settlement could be enhanced on proof of either of the conditions mentioned in section 6; and the limits of enhancement were provided in sections 7-9. The duration of non-permanent tenures depended upon their respective terms, and the liability as to ejectment of a permanent tenure was limited by section 10. Heritability or transferability of non-permanent tenures depended upon the nature and terms of the particular grants by which they were created. The permanent tenures were always heritable and section 11 declares that subject to the provisions of the Act they are capable of being transferred and bequathed in the same manner and to the same extent as other immovable property.]

Enhancement of rent

6. Tenure held since Permanent Settlement liable to enhancement only in certain cases.—Where a tenure has been held from the time of the Permanent Settlement its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held or

(b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded and that the lands are capable of affording it.

7. Limits of enhancement of rent of tenures.—(1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and quitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors-in-interest, whether any fine or premium was paid on the creation of the tenure and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors-in-interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

8. Power to order progressive enhancement.—If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enchancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

9. Rent once enchanced may not be altered for fifteen years.—When the rent of the tenure-holder has been enhanced by the Court or by contract, it shall not be again enahanced by the Court during the fifteen years next following the date on which it has been so enhanced and for the purposes of this section if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order.

Note.—Section 6 specified the conditions on proof of which tenures held from the time of the Permanent Settlement were liable to enhancement, while section 7 prescribed rules and limitations regarding the amount of enhancement which could be imposed on tenures. Sections 7-9 were not confined to tenures existing from the time of the Permanent Settlement but were applicable to all tenures whether created before or after the Permanent Settlement, provided their rent was not fixed. Once it was found in a suit for enhancement that the rent was liable to enhancement, the next question to be decided was how the enhancement could be decreed and the question is answered in section 7-9. The rent of a tenure-holder could also be enhanced by contract.[1]

Other incidents of tenures

10. Permanent tenure-holder not liable to ejectment—A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected :

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Note.—A permanent tenure-holder could be ejected only on one ground, viz., breach of condition. This liability, again, was qualified by the proviso that if the contract was made after the commencement of the Bengal Tenancy Act, 1885, the condition must be consistent with its provisions. Hence this section should be read with section 65, 89, 155 and 178 (1)(c).

1. The Bengal Tenancy Act, 1885, Sec.7(1).

Section 65 enacts that a permanent tenure-holder would not be ejected for arrears of rent, but his tenure would be liable to be sold in execution of a decree for the rent thereof and the rent should be a first charge thereon. Thus a condition in a contract made after 1885 declaring the tenure-holder to be liable to ejectment for non-payment of rent, was not enforceable as it was inconsistent with the provisions of this section. Section 89 enacts that a tenant should not be ejected from his tenure or holding except in execution of a decree.

Section 155(1) enacts that a suit for ejectment of a tenant on the ground (a) that he used the land in a manner which rendered it unfit for the purpose of the tenancy or (b) that he had broken a condition on breach of which he was, under the terms of a contract between him and the landlord, liable to ejectment, should not be entertained unless the landlord served a notice on the tenant in the prescribed manner specifying the particular misuse or breach complained of, and, where the misuse or breach was capable of remedy requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach," and the tenant failed within a reasonable time to comply with the requisition.

Section 178(1)(c) enacts that no contract made with the landlord either before or after the passing of this Act, should entitle him to eject his tenant otherwise than in accordance with the provisions of this Act.

Incidents of a Permanent tenure.—(1) It was heritable.[1]

(2) It was transferable and bequeathable.[2]

(3) It was not subject to ejectment except on breach of condition.[3]

(4) It was not liable to enhancement except in certain cases.[4]

1. The Bengal Tenancy Act. 1885, Sec. 4(9)
2. Ibid, Sec. 11
3. Ibid, Sec. 10
4. Ibid. Sec. 6

(5) It could be sub-let. A permanent tenure-holder could grant a permanent mukarrari lease on any terms.[1]

(6) A permanent tenure-holder could use the land in any manner he thought fit, so long as there was no risk of the landlord to recover the rent.[2]

But a tenure although permanent, heritable and transferable, whether at a fixed rent or rent-free, would not include the right to the minerals unless it clearly appeared by the terms of the grant that such a right was intended to be conveyed?[3]

(7) On failure of heirs, a permanent tenure confiscated to the crown, and did not revert to the original grantor or his heirs. When a landlord granted a permanent and heritable tenure in land, he had no estate left in him unless he reserved to himself a right of re-entry or reversion.[4]

(8) All tenure-holders (except patnidars[5]) could surrender their tenures through Court under section 85A, inserted by the Act of 1938.

11. Transfer and transmission of permanent tenure.—Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

12. Voluntary transfer of permanent tenure.—(1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by a sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not accept for registration any instrument purporting or operating to transfer by sale, gift or usufructuary mortgage a permanent tenure in favour of

1. Ibid, Sec. 179
2. Barada v. Bhupendra (1923) I.L.R. 50 Cal. 694.
3. Shashibhusan v. Jyotiprasad (1916) I.L. R. 44 Cal. 585 (P. C.).
4. Nilmadhab v. Narattam (1890) I. L. R. 17 Cal. 826.
5. Nitya v. Niranjan (1940) 45 C. W. N. 137.

any person other than the sole landlord of such tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and there is filed in the prescribed manner with the instrument a notice of transfer in the prescribed form for service thereof on the landlord or his common agent, if any.

(3) When any such instrument is admitted to registration, the registering officer shall cause the notice of transfer referred to in sub-section (2) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

13. Transfer of Permanent tenure by sale in execution of decree other than decree for rent.—(1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due to respect thereof, or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed the Court shall, before confirming the sale under rule 92 of Order XXI in Schedule I to the code of Civil Procedure, 1908 or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to play into Court such process-fee as may be prescribed and also to file in the prescribed manner in the Court a notice of the sale or final foreclosure in the prescribed form for service thereof on the landlord or his common agent, if any;

(2) When the sale has been confirmed or the decree or order absolute for foreclosure has been made, the Court shall cause the notice referred to in sub-section (1) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

14. Repealed by the Acts of 1907 and 1908.

15. Succession to permanent tenure.—When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the landlord or his common agent, if any, in the prescribed form within six months from the date of succession in addition to or substitution of any other mode of service, in the manner referred to in sub-section (3) of section 12 :

Provided that where, at the instance of the person succeeding, mutation is made in the Rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section.

16. Bar to recovery of rent, pending notice of succession.—A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceeding any rent payable to him as the holder of the tenure, until the duties imposed upon him by section 15 have been performed.

16A. Interpretation.—In sections 13, 15 and 16 the word "person succeeding", "transferee", "purchaser", "mortgagee", and "person becoming entitled to a permanent tenure by succession" include the successors-in-interest of such persons but do not include the landlord where he is the sole landlord.

17. Transfer of and succession to, share in permanent tenure.—Subject to the provisions of section 88 sections 12, 13, 15, 16 and 16A shall apply to the transfer of, or succession to, a share in a permanent tenure.

Note.—Section 12 required that a voluntary transfer of a permanent tenure could be made only by an instrument registered under the ordinary law of registration, and prohibited the registering officer from registering a sale, gift or usufructuary mortgage unless a process-fee and a notice of transfer for service on the landlord or his common agent, if any, were deposited to him. When the purchaser was the sole landlord himself, the payment of such fee was not obviously necessary.

Section 13 required that when a permanent tenure was sold in execution of a decree other than a decree for arrears of rent, or when a mortgage of a tenure, not being an usufructuary mortgage, was foreclosed, the process fee and the notice of sale or final foreclosure must be deposited before the passing of the order of confirmation of sale or of foreclosure absolute, by the purchaser or mortgagee unless he was the sole landlord.[1]

1. The Bengal Tenancy Act, 1885, Sec. 16A.

The object of section 15 was to give information to the superior landlord of any change amongst the holders of the tenure under him. It was the duty of the person succeeding by inheritance to a permanent tenure to obtain mutation of his name in the landlord's sherista. If this was not done, the plaintiff was debared from recovering the rents by suit or other proceedings. But he was not precluded from instituting a suit for rent.

Section 16A made it clear that the transferee of a permanent tenure included his successors-in-interest.

CHAPTER —IV

Raiyats holding at fixed rates.

[This Chapter dealt with the rights and liabilities of raiyats whose rent or rate of rent was fixed in perpetuity. The rent of this class of raiyat was not enhanceable except on the ground of increase in area. They came next to tenure-holders and were assimilated to their status so far as transfer and succession were concerned.]

18. Incidents of holding at fixed rates.—(1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure,

(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(c) shall be deemed to be a settled raiyat of the village if he complies with the conditions set forth in section 20; and

(d) shall be entitled —

(i) to plant,

(ii) to enjoy the flowers, fruits and other products of,

(iii) to fell, and

(iv) to utilise or dispose of the timber of, any tree on the land comprised in his holding.

(2) The provisions of section 23A to 38 (both inclusive) shall not apply to raiyats holding at fixed rates, even though such raiyats have a right of occupancy in the lands of their holding.

Note.—Section 18 did not make all the incidents of a permanent tenure applicable to holdings of raiyats at fixed rates, but only the provisions with respect to transfer and succession. So they were transferable and heritable, subject to

the provisions of sections 12-17. We have already considered the scope of those sections.

The Bengal Tenancy Act, 1885 recognised the transfer of a share of a holding of a raiyat at fixed rates and enabled the transferee to be regarded as one of the tenants in respect of the holding.[1] A purchaser of a share of such a holding could bring a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party.[2]

As a raiyat at fixed rates held the same positions as a tenure-holder in the matter of succession, the provisions of sections 15-17 of the Act would mutatis mutandis apply to him. Section 15 required the successor to a permanent tenure to obtain mutation of his name in the landlord's sherista within six months from the date of succession. Section 16 declared that, if the mutation was not done, he would be debarred from recovering the rent by suit or other proceedings. Section 17 extended the above provisions (sections 12-16A) to the transfer of, or succession to, a share in a permanent tenure.

Ejectment of a raiyat at fixed rates was almost unknown. His rights were recognised from the time of the Permanent Settlement. The conditions under which he held his land were simple in character and a breach thereof could rarely occur. Section 18 (a) (b) dealth with the provisions as to ejectment of a raiyat at fixed rates. In order to maintain an ejectment suit against him under that section, two elements had to be made out; (a) that there was a condition in the contract between him and his landlord, on breach of which he was liable to be ejected and (b) that the condition was consistent with the provisions of the Act. Under section 178 (1) (c) nothing in any contract between a landlord and a tenant made before or after the passing of the Act should entitle a landlord to eject a

1. The Bengla Tenancy Act, 1885, Sec.18 read with sec.17.
2. Mahesh v. Saroda (1893) I.L.R.21 Cal. 433; Monmohan v. Coal Cp., (1913) 18 C. W. N. 596.

tenant otherwise than in accordance with the provisions of the Act. Thus a condition in a lease that a raiyat at fixed rates was liable to ejectment for arrears of rent was null and void, because such a condition was inconsistent with section 65 of the Act which provided that where a tenant was a raiyat holding at fixed rates, he should not be liable to ejectment for arrears of rent, but his holding should be liable to sale in execution of a decree for the rent thereof. Although he was liable to be ejected for breach of a condition in the contract consistent with the provisions of the Act, he could not be ejected except in execution of a decree passed on that ground.[1] It was also a condition preceedent to the institution of the ejectment suit, that the landlord should serve on the tenant before filing such a suit, a notice under section 155 (1) of the Act, specifying the particular breach complained of, and where the breach was capable of remedy, requiring the tenant to remedy the same, and in any case asking him to pay reasonable compensation for the breach. The object of the notice under that section was to give the tenant an opportunity of avoiding ejectment by remedying the breach (if that was possible) or paying reasonable compensation.[2] If the tenant failed to comply with the demand within a reasonable time, the landlord might bring a suit for ejectment, the procedure for which was laid down in sub-sections 2, 3 and 4 of that section. If the above condition precedent was not complied with, the suit for ejectment would not be entertained by the Court. A suit for ejectment on the ground of breach of condition in a contract had to be brought within one year of the breach.[3]

Section 18 (1) (c) dealt with acquisition of occupancy right by a raiyat at fixed rates. This clause was inserted by the Amending Act of 1928. Prior to this amendment, it was hold in Bhutan v. Surendra[4] that a raiyat at fixed rates could not acquire the status of a settled raiyat or a right of

1. The Bengal Tenancy Act. 1885, Sec. 89.
2. Kali v. Kali (1916) 23 C. W.N. 569 at 571.
3. The Bengal Tenancy Act. 1885, Schedule III, Art. 1.
4. (1909) 13 C. W. N. 1025.

occupancy by occupation of the land for twelve years. But in Sarbeswar v. Bejoy Chand[1] and Tarani v. Srish[2] it was held that this class of raiyat could become a settled raiyat of the village under section 20 of the Act and thus acquired a right of occupancy within the meaning of section 21. The conflict of decisions was, however, set at rest by the Act of 1928.

Section 18 (1) (d) was inserted by the Act of 1928. Before the amendment there was no express provision in the Act as to the right in trees of this class of raiyat. But it was held in several cases[3] that he could cut down trees and appropriate the timber. The amendment simply gave statutory recognition to his right in trees by inserting clause (d) to section 18(1).

Sub-Section (2) was provided by the Amending Act of 1928. A raiyat at fixed rent enjoyed higher rights than that of an occupancy raiyat because the landlord reserved only the right to a fixed amount of rent from the former. Such a tenant was not, therefore, subject to sections 23A to 38 even though he acquired an occupancy right.

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1. (1921) 26 C. W. N. 15.
2. (1928) 32 C. W. N. 587.
3. Midnapore Zemindary v. Jagat A. I. R. 1925 Cal. 139; Radhika v. Samir (1917) 21 C. W. N. 636; Goluk v. Nubo (1874) 21 W. R. (C. R.) 344; Sharoda v. Gonee (1864) 10 W. R. (C. R.) 418.

CHAPTER —IVA

Provisions as to transfers of tenures and holdings and Landlord's fees.

18A. Saving as to statements in instruments of transfer where landlord is not a party.—Notwithstanding anything contained in section 13 of the Evidence Act, 1872 nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument.

18B. Saving as to acceptance of landlord's fees.—The acceptance by a landlord of the landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

(a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or

(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

18C. Forfeiture of unclaimed landlord's fees.—All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V and all fees deposited with the Collector under sub-section (1) of section 48H shall, unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government.

CHAPTER —V

Occupancy-raiyats

[This is one of the most important Chapters of the Act. It laid down the rules relating to the acquisition by a raiyat of the right of occupancy in the land which he cultivated or occupied. The amending Act of 1928 introduced important changes in the law relating to an occupancy raiyat, improving his status and conferring on him the right of transferability which was so long sanctioned by custom only. His position was further improved by the Amending Acts of 1938 and 1940, by which the landlord's rights to transfer fees and pre-emption were abolished; the right of pre-emption was conferred on the raiyat, and the provisions regarding usufructuary mortgage were made more beneficial.]

General

19. Continuance of existing occupancy-rights.—(1) Every raiyat who, imemdiately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land shall when that Act comes into force, have a right of occupancy in the land.

(2) The exclusion from the operation of this Act, by a notification under clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

Note.—This section preserved in express terms all the existing rights of occupancy already acquired before the commencement of the Amending Act of 1928 either under the express provisions of any of the previous enactments or by custom or otherwise.

Nature of occupancy right—The expression "occupancy right" was not defined anywhere in the Act. In the absence of any definition it is understood in the ordinary sense as the

right to maintain occupation without let or hindrance from the external world. Field defined it as the privilege of continuing to hold the land, in which such right was acquired, so long as to rent legally demandable for the same was paid. According to Finucane and Ameer Ali, a right of occupancy might be described as a permanent lease, subject to the payment of a fair rent, unless held at a fixed rent.

It was held that under the Bengal Rent Act, 1859 the right of occupancy was rather in the nature of a personal privilege than a substantive proprietory right.[1] But under the Bengal Tenancy Act, 1885, it was held that an occupancy raiyat enjoyed a substantive right in the land and his interest could not be appropriately described as a mere personal right or privilege.[2] Thus he could not contract surrendering his right of occupancy and even a compromise decree passed in accordance with the provisions of the Act could not destroy such a right.[3] The right of occupancy was a statutory right; it was inherent in the status of a raiyat and could not be acquired either by grant from the landlord or by contract.[4] On the other hand if a settled raiyat of a village took some land for the purpose of cultivation for a term of years with the express stipulation that he would not hold it after the expiration of the term, he did not become a trespasser after the expiry of the term. He acquired occupancy right in the land by virtue of his status as a settled raiyat of the village and became a tenant on the land.[5] If a zemindar brought a settled raiyat upon the land and gave him an interest in that land for the purpose of cultivation for however short a time, and even if the crop to be cultivated were of a limited kind, the

1. Norendra v. Ishan (1874) 22 W. R. 22 at 27 F. B. : Edgall v. Biswanath (1921) 62 I. C. 59.
2. Chandra Binode v. Ala Box (1920) I. L. R. 48 Cal. 184 at 246, 247, 249, 250, S. B.
3. Nasrat v. Kalidas (1919) 54 I. C. 750 at 751.
4. Kesho v. Parmeshri (1923) 71 I. C. 920 at 910 affirmed in Bindeswari v. Kesho (1926) 31 C. W. N. 74 at 75 P. C.
5. Dwarka v. Nalinee (1937) I. L. R. 2. Cal. 689 at 692.

provisions of section 21 of the Act might apply, so as to enable the raiyat to acquire occupancy rights, in the land.[1] The occupancy right being a statutory right, a temporary holder or any limited owner (Hindu widow) could do nothing to prevent the acquisition of such right save by legal process. Consequently the right might be acquired by a raiyat under a Hindu widow or any other temporary holder, and that could not be questioned by a reversioner.[2]

A right of occupancy accrued to a raiyat and not to a middle man or tenure holder. In the words of the learned Judges of the Privy Council—"It would be a monstrous straining of the law to apply the term 'right of occupancy' to a middle man".[3]

20. Definition of "settled raiyat".—(1) Every person who for a period of twelve years, 'whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

1. B. N. W. R. v. Janki, A. I. R. (1936) Pat. 362 at 369.
2. Ichhyamoyi v. Kailash (1913) 18 C. W. N. 358; Harmanoge v. Ganour (1916) 37 I. C. 360.
3. Midnapore Zemindary v. Naresh (1920) I. L. R. 48 Cal. 460 at 467 P. C.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall as between him and the landlord under whom he holds the land, presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Note.—This section prescribed the mode by which a cultivator might become a settled raiyat of a particular village, while the subsequent sections dealt with his rights and status. This section was the result of an attempt to rehabilitate the khoodkast or the resident raiyat of the Regulations in his established hereditary right in the land he cultivated, so long as he continued to pay the rent justly demandable from him with punctuality and to give reasonable security to him in the occupation and enjoyment of his land. Under the Rent Acts of 1859 and 1869 it was necessary for a raiyat to remain in occupation of the same land for the statutory period of twelve years before he could acquire a right of occupancy. If he took up fresh land in the village, the fact that he had some other land in the village for more than twelve years, did not give him any right of occupancy in his new holding till he held it for twelve years. Landlords sometimes took advantage of the law and prevented raiyats from acquiring a right of occupancy by changing the lands of their holdings before the expiration of the statutory period. This device had been put a stop to by the Bengal Tenancy Act, 1885. Under this Act, in order to become a settled raiyat of a village, the raiyat must have held "as a

raiyat", some land in the village, continuously for a period of twelve years wholly or partly, before or after the commencement of this Act, and either under a lease or otherwise. It was not, therefore, necessary that he should continuously hold the same land. But this rule did not apply to chur or dearah land or land held under the custom of utbandi, which must be held for twelve years before the right of occupancy could be acquired therein. Nor did it create a right of occupancy in favour of a raiyat who held the landlord's private lands under a contract for a term of years or from year to year.

Conditions for acquiring the status of a settled raiyat.—(1) A raiyat must hold land in the same village, but not necessarily the same land,

(2) as a raiyat,

(3) either alone or as co-sharer with another person,

(4) continuously for a period of 12 years;

(a) such period might have expired wholly or partly before or after the commencement of the Bengal Tenancy Act, 1885.

(b) in coming such period, he could add the number of years, if any, during which his predceessors from whom he inherited, held any land in the village, and

(c) if, having been wrongly evicted by his landlord, he recovered possession under the provisions of section 87 of the Act, the period during which he was out of possession would count in his favour, even though it exceeded one year.

(5) The status once acquired was not lost by removal from the holding and the village unless the absence continued for more than one year.

21. Settled raiyats to have occupancy-rights.—(1) Every person who is a settled raiyat of a village within the meaning of section 20, shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of section 20, held land as a raiyat in that

village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupacy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Distinction between settled raiyat and occupancy raiyat.—There was a distinction between an occupancy raiyat and a settled raiyat. An occupancy right could be acquired by purchase but the right of a settled raiyat was acquired only by holding land continuously in the village for 12 years. The mere fact, that a person had an occupancy holding in a village, did not give him a right of occupancy in his other holdings in the same village, unless he was also a settled raiyat. But a settled raiyat obtained a right of occupancy directly he took up any fresh land. The status of a settled raiyat could not be transferred. This was the only distinction between a settled raiyat and an occupancy raiyat. Hence it was observed by Maclean C. J. that "every settled raiyat had a right of occupancy, but every occupancy raiyat was not necessarily a "settled raiyat."[1] Suppose A was a settled raiyat and consequently an occupancy raiyat, and B purchased his holding; as soon as B purchased it he became an occupancy raiyat, although he was in possession of the holding for one day. So he was an occupancy raiyat without begin a settled raiyat. If he took up other lands for cultivation, he would not acquire occupancy right in them, until he held lands in the village as a raiyat continuously for 12 years. A settled raiyat on the other hand acquired a right of occupancy directly he took up any fresh land.

22. Effect of acquisition of occupancy-right by landlord.—(1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or in any

1. Kuldip v. Chatur (1898) 2 C. W. N. cccii at ccciii (notes) ; Midnapore Zemindary v. Hrishikesh (1914) I. L. R. 41 Cal. 1108 at 1123 F. B.

other way whatsoever, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-raiyat or share or portion thereof, together with the occupancy-rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder :

Provided that a co-sharer landlord who purchases a holding of a raiyat at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a raiyat but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the raaiyat to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not while so holding, acquire a right to hold as a raiyat any land comprised in his temporary tenure or farm.

Explanation. — A person having a right to hold the lands of an occupancy holding as a raiyat does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

Note.—This section introduced into the Act what is commonly called the doctrine of merger in English Law. As technically used in the common law of England, merger means the sinking of a lesser title or estate in the greater one. It is based on the well-known maxim of law "Nemo potest esse tenens et dominus" which means that a person cannot be, at the same time, both landlord and tenant of the same premises.

Sub-section (1) speaks of merger in certain specified caes only. It provided that on the union of the entire interests of the landlord and the occupancy raiyat in one and the same person, the lower interest merged into the higher interest and only the higher interest subsisted.

Merger under this sub-section took place on the fulfilment of the following conditions :

(1) the superior interest must be that of a proprietor or of a permanent tenure-holder;

(2) the lower interest must be that of an occupancy raiyat;

(3) no other tenancy must intervene;

(4) it must be the entire interest of the respective parties;

(5) entire interests of the parties must unite in one and the same person.

If the requirements were fulfilled the person in whom the two interests united, would have only the higher right and would hold the land as a proprietor or permanent tenure-holder as the case might be. This was the result, whether the landlord acquired the raiyat's interest or the raiyat acquired the landlord's interest. There was, however, a reservation in favour of the rights of third person, e.g. a mortgagee or under-lessee of the occupancy raiyat.

Where taluka and raiyati interests in the same land developed by inheritance on the same set of persons but the shares of such persons in the two interests were not co-extensive, held that there was no merger under this section.[1]

Sub-section (2) read with the proviso enacted that if a cosharer landlord of an estate or a permanent tenure acquired an occupancy holding within it the occupancy right would not merge in the proprietary interest. The co-sharer landlord would not only hold the land as a raiyat but would also have the right of occupancy in such land. But if he purchased the holding in execution of a rent decree or of a certificate for arrears of rent, his position was that of a proprietor or tenure-holder subject to the payment of a fair and equitable sum to

1. Aswani v. Safia (1952) 2 P. L. R. (Dhaka) 342.

his co-sharers. That is to say, if he acquired by private sale, succession etc., he would hold it as a raiyat with occupancy right.

Sub-section (3) was inserted to make the original intention of the Act clearer that an ijaradar could not claim to have acquired either occupancy or non-occupancy rights. This sub-section read with the Explanation laid down that a temporary tenure-holder or farmer of rents would not, during the period of his lease, acquire the status of a raiyat (either occupancy or non-occupancy) in any land comprised within his tenure or farm; but a person having a right of occupancy in lands did not lose the status of a raiyat by subsequently becoming a tenure-holder or farmer of rents in respect of those land.

To sum up, the doctrine of merger prevailed (1) where the sole landlord acquired in any way an occupancy holding and vice versa; (2) where a co-sharer landlord purchased an occupancy holding at a rent-sale or certificate sale; (3) where the raiyati interest in any land was acquired by a temporary tenure-holder or farmer of rents within whose tenure or farm such land was situated, but merger would last in such cases during the continuance of the tenure or farm.

The doctrine would not operate (1) where a co-sharer landlord pruchased on occupancy holding at a private sale or acquired it otherwise; (2) where an occupancy raiyat acquired a co-sharer landlord's interest; (3) where an occupancy raiyat became a temporary tenure-holder or farmer of rents in respect of those lands.

Incidents of occupancy-right

23. Rights of raiyat in respect of use of land. — When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner he likes.

Note.—This section was amended by the Act of 1949 under which an occupancy raiyat was given the right to use his land in any manner he liked. Before the amendment his right was restricted; he could not materially impair the value of the land or render it unfit for the purposes of the tenancy.

23A. Rights of occupancy-raiyat in trees.—When a raiyat has a right of occupancy in respect of any land, he shall be entitled—

(i) to plant,

(ii) to enjoy the flowers, fruits and other products of,

(iii) to fell, and

(iv) to utilise or dispose of the timber of, any tree on such land.

Note.—This section was inserted by the Amending Act of 1928. Before this amendment, the right of an occupancy raiyat regarding trees was left to local custom. But custom was different in different parts of the country and gave rise to much litigation. So it was necessary to introduce this section giving to an occupancy raiyat all rights in trees.

24. Obligation of occupancy-raiyat to pay rent—An occupancy raiyat shall pay rent for his holding at fair and equitable rates.

25. Protection from eviction except on specified grounds.—An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) . . . . (This clause was omitted by the Act of 1949),

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of whih he is, under the terms of a contract between himself and his landlord, liable to be ejected.

26. Devolution of occupancy right on death.—If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property; provided that in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

26A. Repealed by the Amending Act of 1938.

26B. Holdings of occupancy-raiyats with occupancy rights transferable.—The holding of an occupancy-raiyat or a share

or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Note.—Under the Rent Acts of 1859 and 1869 an occupancy raiyat could not transfer his holding, except with the consent of his landlord, unless the custom of the country or locality authorised such trnasfer. The Bengal Tenancy Act, 1885 had no specific provision for transfer of occupancy holdings but declared that the right to transfer, if it existed by custom, could not be taken away by contract entered into between the landlord and the raiyat. By the Amending Act of 1928, however, an occupancy holding was made transferable in the same manner and to the same extent as other immovable property, subject to the payment of landlord's fee and pre-emption. But the Amending act of 1938 abolished those rights of landlord; rather it gave the right of pre-emption to a co-sharer with an occupancy raiyat.[1]

26C. Manner of transfer and notices to landlord and co-sharers.—(1) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein, and unless it is accompanied in the prescribed manner by—

(i) a notice giving particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, who is or are not party or parties to the transfer, and

(ii) such notices and process fees as may be required by sub-section (4).

1. For detailed study, see author's Bengal raiyats, Chapter 3, Sec.2 (5).

(2) In case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files in the prescribed manner a notice and deposits a process fee similar to those referred to in clause (i) of sub-section (1).

(3) A Court or Revenue officer shall not confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files in the prescribed manner a notice or notices and deposits a process fee or fees similar to those referred to in sub-section (1).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed in the prescribed manner notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer.

(5) The Court, Revenue officer or registering officer, as the case may be, shall, in the prescribed manner, serve the notices for which this section provides, and after receipt of such notice, the landlord or landlord's agent, as the case may be, shall not refuse to recognise the transferee as the tenant in respect of the holding or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor :

Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the land-lord to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the land-lord was a party, deposit with the authority before whom the appropriate suit or proceeding was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

(6) In this section—

(a) "transferee," "purchaser" and "mortgagee" include their successors-in-interest,

(b) "transfer" does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and

(c) "transferor" includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3).

Note.—Section 26C was first introduced by the Act of 1928. The original section was entirely substituted by this section by the act of 1938. The amendment was necessary by the repeal of sections 26D and 26E and the substitution of section 26F. Some words were again substituted by the Amending Acts of 1940 and 1947.

26D, 26E. Repealed by the Amending Act of 1938

26F. Power of co-sharer of transferor to purchase.—(1) Except in the case of-

(a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or

(b) a transfer by exchange, lease, or partition, or

(c) a transfer by bequest, or gift (including heba but excluding heba-bil-ewaz for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or

(d) a wakf in accordance with the provision of the Muhammadan Law, or

(e) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual-one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to the Court for the said portion or share to be transferred to himself or themselves.

Explanation—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

(2) The application shall be dismissed, unless the applicant or applicants at the time of making it, deposit in Court the amount of the consideration money or the value of the transferred portion or share of the holding, as stated in the said notice, together with compensation at the rate of ten per centum of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent or in annulling incumbrances on the property since the date of the transfer. The Court shall then direct the applicants (including any person whose application under sub-section (4) has been granted) to deposit within such period as the Court thinks reasonable, such amount as the transferee has paid on such account, together with interest at the rate of six and a quarter per centum per annum with effect from the date on which the transferee made such payments.

(4) (a) When an application has been made under sub-section (1), any of the remaining co-sharer tenants, including the transferee, if one of them, may within the period referred to in that sub-section or within one month of the date of the application, whichever is later, apply to join in the said application; any co-sharer tenant who has not applied under either sub-section (1) or this sub-section shall not have any further power of purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the court may fix, not extending beyond the period referred to in clause (a), the applicant deposits in Court for payment to the applicant or applicants under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) The Court shall thereafter make an order allowing the applications under sub-section (1) of such applicants [whether they applied under sub-section (1) or sub-section (4)] who have made the deposits required by this section and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks equitable.

(6) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant, and in this case may require the applicant who makes such request to make, within such period as the court may fix, such further deposit as the Court considers necessary for equitable distribution among the remaining applicants :

Provided that no apportionment ordered under this sub-section shall operate as a division of the holding.

(7) From the date of the making of the order under sub-section (5)-

(a) the right, title, and interest in the portion or share of the holding, accruing to the transferee from the transfer shall, subject to the provisions of section 22 and to any orders passed under sub-section (6), be deemed to have vested, jointly and free from all incumbrances which have been annulled or created after the date of the transfer, in the co-sharer tenants,

whose applications to purchase have been allowed under this section,

(b) the liability of the transferee for the rent due from him on account of the transfer shall cease, and

(c) the Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in them.

(8) When a transferee is divested of his right, title and interest under the provisions of sub-section (7), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a raiyat ejected from his holding by proceedings for his ejectment commencing on the date on which the application under sub-section (1) was made.

(9) Nothing in this section shall take away the right of preemption conferred on any person by Muhammadan Law.

(10) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

(11) In this section "transfer" does not include simple or usufructuary mortgage or mortgage by conditional sale until a decree or order absolute for foreclosure is made.

Note.—Section 26F, introduced in 1928, gave the right of pre-emption to the landlord of the occupancy holding when the entire holding or a portion or share thereof was transferred, as a substitute for his right of ejectment which he lost when occupancy holdings were made transferable without the consent of the landlord by the same Act. 'The Amending Act of 1938 gave the right of pre-emption to the co-sharer tenant when a portion or share of the holding was transferred. The object was that it will help consolidation of holding and would prevent family property from passing out of the family into the hands of the stranger.

Sub-section (1) provided that the right of pre-emption was not available in the following cases :—

(1) Transfer to a co-sharer tenant whose existing interest accrued otherwise than by purchase; that is to say, where the transferee was one of the original co-tenants, and not an outsider. From the words "has accrued otherwise than by

purchase", it is clear that where the transfer was made to a co-sharer in the tenancy whose existing interest accrued by purchase an application could be made by other co-sharers of the holdings for pre-emption of the portion of share transferred[1] where the transfer was made to a co-sharer tenant jointly with a stranger, the right of pre-emption could be exercised by the other co-sharer tenants in respect of the portion or share of the transferred property which was acquired by the stranger purchaser.[2] If their shares were not specified in the deed of transfer, the shares would be presumed to be equal according to the rule of equity.

(2) Transfer by exchange, lease or partition.

(3) Transfer by bequest, gift or heba in favour of husband or wife of the testator or donor or of any consanguine relation within three degrees. But if the transfer was made by way of a heba-bil-ewaj for a pecuniary consideration, pre-emption would lie, for such a transaction was practically a sale and not a provision for near relations.

(4) Transfer by way of wakf. It must be valid under the provisions of the Muslim Law.

(5) Dedication for religious or charitable purposes without reservation of pecuniary benefit for any individual e.g. public charitable trust.

Except in above cases, one or more co-sharer tenant of the holding could apply for pre-emption within four months of the service of notice under section 26C. But an un-notified co-sharer tenant was entitled to make an application for pre-emption within three years from the date of Kabala.[3] The limitation of the period would run from the date of its registration.[4] Unless one was an existing co-sharer tenant on

1. Harenda v. Ynus (1955) 8 D. l. R. 567.
2. Khodeja v. Khalique (1940) 44 C. W. N. 981; Tamizunnessa v. Umar Ali (1965) 18 D. L. R. 572.
3. Abdul Kader v. Md. Seraj (1964) 15 P. L. R. (Dhaka) 831; Md. Meher Ali v. Md. Karam Ali (1964) 17 D. L. R. 365.
4. Meher v. Karam (1964) 15 P. L. R. (Dacca) 101; Noab v. Golam (1961) 13 D. L. R. 889.

the date of registration of a kabala he had no claim for pre-emption.[1] There is distinction between a co-sharer tenant and a co-sharer in tenancy. The latter was not entitled to pre-empt.[2] After sub-division of the original jama by the Revenue-officer under section 88A of the Act, the original co-sharers of the original jama were no longer co-sharers and, therefore, could not apply for pre-emption.[3]

An application for pre-emption would lie even where the sale was made subject to a condition of reconveyance on payment of money within certain time.[4] In such a case the pre-emptor got the property subject to the agreement.[5]

Sub-section (2) required that an application for pre-emption must be accompanied by a deposit of the entire consideration money of the property transferred, as stated in the notice served under section 26C, together with compensation at the rate of 10 per cent thereon.[6] The deposit was a condition precedent to the application being entertained and its non-fulfilment rendered the application liable to be summarily dismissed. The right of pre-emption was not an indefeasible right. If during the pendency of the proceeding for pre-emption, the pre-emptor ceased to be a co-sharer, the right was lost.[7] Partial pre-emption by a co-sharer was not permissible in law.[8] Where lands of two different holdings were transferred by a single document and the applicants were co-sharers in one of the two holdings and they deposited the proportionate amount which were equal to the share claimed by

1. Nitya v. Suresh (1964) 14 P. L. R. (Dacca) 1209.
2. Rishan v. Abdul (1961) 12 P. L. R. (Dacca) 179; Basharatullah v. Faizuddin (1956) 8 D. L. R. 367.
3. Kafizan v. Farid (1965) 18 D. L. R. 281.
4. Biswaswar v. Joytennessa (1961) 13 D. L. R. 287.
5. Ibid.
6. Salimuddin v. Mohitosh (1962) 14 D. L. R. 796; Diam v. Haran (1960) 13 D. L. R. 283.
7. Mamijannessa v. Tazaruddin (1961) 14 D. L. R. 572.
8. Salimuddin v. Mohitosh (1962) 14 D. L. R. 796; Abdul Kader v. Md. Seraj Khan (1964) 17 D. L. R. 565; Babul v. Sm. Laljan (19566) 10 D. L. R. 54.

them, it was held [1] that such a deposit was valid and they were not required to deposit the entire consideration money.

Sub-Section (3) laid down the procedure to be followed by the Court when the deposit as required by sub-section (2) was made. It provided that if such deposit was made, the Court would give notice to the transferee to appear on a fixed date and to state the amount, if any, he paid as rent or in annulling encumbrances on the property since the date of the transfer. The Court would then make an order directing the applicant or applicants, including the co-applicants under sub-section (4), to deposit in Court the aforesaid amount paid by the transferee with interest thereon at the rate of 65 per cent within a fixed date. Sub-section (5) provided that when this deposit was made the Court should make an order all owing pre-emption and directing payment of money under deposit to the transferee or other persons who were entitled thereto. Sub-section (7) provided that the right, title and interest in the portion or share of the holding accruing to the transferee from the transfer would, subject to the provisions of section 22, vest, free from all encumbrances annulled or created since the date of transfer, in the co-sharer tenants whose applications for pre-emption were allowed.

Sub-section (4) gave the remaining co-sharer tenants an opportunity to join as co-applicants in the pre-emption proceeding and laid down the procedure in relation to it. Clause (a) provided that any of the remaining co-sharer tenants including the transferee could, within four months of the service of the notice of transfer under section 26C or within one month of the date of the pre-emption application, whichever was later, apply to join as a co-applicant in the pre-emption proceeding. But a person who was not entitled to get a notice under section 26C could neither make an application nor become a co-applicant for pre-emption.[2] This clause gave two periods of limitation. First, if any co-sharer intended to make an application for pre-emption, he must file his application

1. Brojendra v. Debendra (1965) 17 D. L. R. 618.
2. Dukhiram v. Aminuddin (1961) 14 D.L. R. 165.

within four months from the date of the kabala sought to be pre-empted. The second period of limitation was one month for the remaining co-sharers from the date of application.[1] The right of the co-applicants could not be defeated by subsequent withdrawal or default of the original applicant.[2] In such a case they would get the opportunity to get the entire subject matter, that is to say, the share claimed by the original applicant.[3] Clause (b) provided that the applicant should have to deposit in Court, within the fixed date, such sum as the Court ascertained for the purpose of sub-section (2) for payment to the original applicant or applicants under sub-section (1). If the deposit was duly made, the Court would grant the application to join and thereupon the applicant would be deemed to be an applicant under sub-section (1).

Sub-section (6) applied when more than one co-sharer tenant joined in the application and an apportionment of the portion was necessary as between the several applicants. In making an order for pre-emption under sub-section (5) the Court, on its own initiative, and on the request of any applicant, would apportion the holding amongst the applicants for pre-emption in such manner as it considered fair and equitable, after taking into consideration the existing possession of the respective parties. The expenses of apportionment were to be paid by the applicant, if any, by deposit in Court within the date fixed by it.

The apportionment of land was nothing but partition amongst the applicants. But such apportionment would not affect their joint liability to the landlord, inasmuch as the proviso laid down that the apportionment should not operate as a division of the holding.

Sub-section (8) provided that was a transferee of a portion or share of an occupancy holding was divested of his right, title and interest in the same he would be deemed to be a raiyat ejected from his holding under clauses (a), (c) and (d) of section 156.

1. Ajit v. Hacharaddin (1965) 15 P. L. R. (Dhaka) 446=18 D. L. R. 632.
2. Abdul Kader v. Md. Seraj Khan (1964) 17 D. R. L. 565.
3. Ibid.

Sub-section (9) saved the Muslim Law of pre-emption from the operation of this section.

Sub-section (10) gave the right of appeal from an order made on an application for pre-emption. But there was one appeal from an order granting or rejecting an application for pre-emption under this section. That is to say, there was no second appeal to the High Court from the appellate order. The appellate order was, however, open to revision by the High Court under section 115 of the Civil Procedure Code, 1908.

Sub-Section (11) was an interpretation clause and gave an explanation of the term "transfer" as used in this section.

26G. Limitation on mortgage by occupancy-raiyat.—An occupancy raiyat may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years and notwithstanding anything contained in this Act or in any other law or in any contract, no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall have any force or effect.

(1a) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, every mortgage (including a mortgage by conditional sale) entered into by an occupancy-raiyat in respect of his holding or of a portion or share thereof on which possession of land is delivered to the mortgagee—

(a) which was so entered into before the commencement of the Bengal Tenancy (Amendment) Act, 1928, and was subsisting on or after the first day of August, 1937, or

(b) which, being other than an usufructuary mortgage having under sub-section (1) no force or effect, was so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, and before the commencement of the Bengal Tenancy (Amendment) Act, 1940, and was subsisting on or after the commencement of the Bengal Tenancy (Amendment)

Act, 1940, shall be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument or for fifteen years, whichever is less.

(1b) Notwithstanding anything contained elsewhere in this Act or in any other law or in any contract, no mortgage (other than a complete usufructuary mortgage) entered into by an occupancy-raiyat in respect of his holding or of a portion or share therefore after the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land is delivered to the mortgagee, shall have any force or effect.

(2) Notwithstanding any contract to the contrary, entered into before or after commencement of the Bengal Tenancy (Amendment) Act, 1928, such a complete usufructuary mortgage, or a mortgage referred to in sub-section (1a) may be redeemed at any time before the expiry of the periods referred to in sub-section (1) or sub-section (1a).

(3) Every such complete usufructuary mortgage entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall be registered under the Registration Act, 1908.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law, no document creating or purporting to create—

(a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-raiyat for a period exceeding or which can exceed fifteen years, or

(b) an usufructuary mortgage of such holding, portion or share, other than a complete usufructuary mortgage or

(c) a mortgage of such holding, portion or share [other than a complete usufructuary mortgage or an usufructuary mortgage referred to in clause (b)] in which possession of land is delivered to the mortgagee,

shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court or by any public servant :

Provided that

(i) a document referred to in clause (a) or (b) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, or

(ii) a document to in clause (c) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1940.

may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.

(5) Notwithstanding anything contained in this Act or in any other law or in any contract, the consideration (with all interest thereon) for a complete usufructuary mortgage or for another form of usufructuary mortgage deemed under sub-section (1a) to have taken effect as a complete usufructuary mortgage, entered into by an occupancy-raiyat in respect of his holding or portion or share thereof, shall be deemed to have been extinguished on the expiry of the period (a) mentioned in the instrument of the mortgage, or (b) of fifteen years, whichever is less, from the date of the registration of the instrument, or where there is no registered instrument, from the date of the mortgagee's entry into possession, and the mortgagor shall thereupon become entitled to possession of the mortgaged property, and he may, if he is not forthwith given possession, apply to the Court to be restored to possession thereof and to be awarded such compensation as may appear to the Court to be equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession :

Provided that if in the case of such a mortgage subsisting on or after the first day of August, 1937, the said period has, on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938 already expired, the mortgagor shall, immediately on the commencement of the said Act, become entitled to possession of the mortgaged property, but he shall not be entitled to, nor shall the mortgagee be liable for, any compensation in respect of the mortgagee's possession from the date of the expiry of the said period to the date of commencement of the said Act.

(6) An application under sub-section (5) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court to which such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable and may pass an order restoring possession of the mortgaged property to the mortgagor.

(7) Any order made by a Court under sub-section (6) shall have the effect of a decree of a Civil Court and shall be subject to the provisions of the Code of Civil Procedure, 1908 in respect of appeal, revision or review :

Provided that, notwithstanding anything contained in this or any other Act for the time being in force, a memorandum of appeal or application for review or revision under this sub-section shall be chargeable with a fee of twelve annas only.

(8) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force of in any contract, in respect of a mortgage by condition sale subsisting on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land has been delivered to the mortgagee—

(a) the mortgagor may at any time institute a suit for a declaration that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered, and for recovery of possession of the mortgaged property, and

(b) the mortgagee may, at any time after the expiry of fifteen years from the date of the instrument creating the mortgage, institute a suit for a delcaration that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered.

(9) In any suit instituted under sub-section (8) the Court may, if it thinks fit, re-open any transaction relating to the mortgage for the purpose of ascertaining whether the mortgagee in possession has derived from the mortgaged property profits sufficient to extinguish the original principal, together with simple interest thereon calculated at the rate of eight per centum per annum.

(10) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has been extinguished by the profits, it shall make a declaration to this effect and shall pass a decree restoring possession of the mortgaged property to the mortgagor.

(11) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to this effect, and may fix any sum, not exceding the original principal, on payment of which the mortgagor shall be entitled to redeem the mortgaged property and may pass a decree accordingly, allowing the mortgagor a reasonable period within which to make such payment; and in any such decree the Court may further direct that, if such payment is not made within the period so fixed, the mortgagee shall retain possession of the mortgaged property for such period as may be specified in the decree and that, after the expiry of that period, the original principal, together with all interest due thereon, shall be deemed to be extinguished and possession of the mortgaged property shall be restored to the mortgagor.

(12) Subject to the provisions of sub-section (13), the decision of the Court under sub-section (10) or sub-section (11) shall be final.

(13) The provisions of the Code of Civil Procedure, 1908, relating to appeals shall apply to all decree or orders made under sub-sections (10) and (11), but notwithstanding anything contained in the Limitation Act, 1908 or in this Act, the period of limitation for an appeal to the Court of a District Judge against any such decree or order shall be ninety days from the date of the decree or order appealed from.

Note.—This section was first introduced by the Amending Act of 1928. Since then it was amended twice. The Amending Act of 1938 introduced sub-sections (1a), (5) (6) and the proviso to sub-section (4). The Act of 1940 amended these sub-sections again and also added sub-sections (1b), (4c), proviso to sub-section (4), and sub-sections (7) to (13).

Sub-section (1) imposed restriction on the transferability of occupancy holdings provided in section 26B. It laid down first, that an occupancy raiyat might enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which would not, in any case, exceed 15 years; secondly that no other form of usufructuary mortgage created after the Amending Act of 1928 would be valid and operative.

Sub-section (1a) provided that a non-complete usufructuary mortgage created before the commencement of Amending Act of 1928, if it was not already determined by the expiration of the stipulated period and was subsisting on the 1st of August, 1937, would be treated as a complete usufructuary mortgage for the stipulated period or for 15 years whichever was less.

Sub-section (2) provided for early redemption of all complete usufuctuary mortgages referred to in sub-section (1) and also of all non-complete usufructuary mortgages created before 1928. It laid down that such mortgages could be redeemed at any time before the expiry of the stipulated period mentioned in the respective documents or of 15 years from the dates of their creation, as the case might be.

Sub-section (3) required that since the commencement of the Amending Act of 1928 a complete usufructuary mortgage in respect of an occupancy holding should be effected by a registered instrument, and thus superseded the analogous provisions of the Transfer of Property Act, 1882, under which a mortgage for a consideration of less than Rs. 100 can be effected by mere delivery of possession.

Sub-section (4) provided that a document, creating or purporting to create a complete usufructuary mortgage for a term exceeding 15 years or a non-complete usufructuary mortgage, could not either be admitted to registration or received in evidence or acted upon in any Court or before any public servant. The provisio, however, saved the documents executed before 1928 so that they might not be effected by the above provisions of law and laid down that a document relating to a non-complete usufructuary mortgage executed before the Act of 1928 might be so received in evidence or so acted upon as a complete usufructuary mortgage for the stipulated period or for a period of 15 years, as the case might be.

Sub-section (5) death with automatic redemption of complete usufructuary mortgages and non-complete usufructuary mortages created before 1928; it also dealt with the right of the mortgagor occupancy raiyats to get back possession of the mortgaged holdings upon redemption. It provided (1) that all complete usufructuary mortgages as well as all non-complete usufructuary mortgages should be deemed to be extinguished on the expiry of the stipulated period as mentioned in the instrument of mortgage or of 15 years, whichever was less, from the date of the registration of the instrument or where there was no registered instrument, from the mortgagee's entry into possession; (2) that thereupon the mortgagor was entitled to immediate possession of the mortgaged holding; and (3) that if he was not forthwith given possession he could make an application to the Court or to the Revenue-officer for restoration of possession. This provision would not apply to a suit for restoration of the mortgaged land instituted much beyond three years after the termination of 15 years.[1] Proviso to sub-section (5), however, said that if the period of the automatic redemption of a mortgage as contemplated in sub-section (5) expired between the 1st August, 1937 and the date of the commencement of the Amending Act of 1938 (the 18th August, 1938), the mortgagor would be entitled to possession of the mortgaged holding immediately on the commencement of the above Act, but he was not entitled to, nor was the mortgagee liable for, any compensation for the mortgagee's retaining possession of the mortgaged holding during the period between 1st August, 1937 and the 18th August, 1938. Sub-section (5) had no application to a mortgage by conditional sale.[1] In a mortgage by conditional sale the remedy of the mortgagor was not by an application under section 26G(5) of the Act but by a suit.[2]

Sub-section (6) laid down the procedure for getting back possession in case it was not amicably restored. It provided (1) that such an application should be accompanied by process fee for service of notice on the mortgaee, and (2) that the Court or Revenue-officer to whom such an application was made, (a) might, after service of the notice, award to the mortgagor an equitable compensation for the period during which the mortgagee retained possession of the mortgaged holding after the mortgagor became entitled to be restored to possession, and (b) might pass an order restoring possession of the mortgaged property to the mortgagor.

Sub-section (7) related to the order of the Court and sub-sections 8-13 related to mortgage by conditional sale. Sub-section 8(a) gave to the morgagor a right to institute a declaratory suit and to recover possession even before the statutory period, on providing that the debt with interest was satisfied even though the period of 15 years had not been expired. Clause (b) on the other hand authorised the mortgagee to institute a suit to obtain a declaration, on the expiry of 15 years, that the debt with interest had nto been extinguished by the profits arising from the land. Sub-sections 9-11 laid down the procedure to be followed when the application under sub-section (8) was presented. Sub-sections 12 and 13 dealt with the finality of the order passed by the Court in the proceeding under sub-section (8).

1. Jahur v. Akram (1965) 17 D. L. R. 343.

1. Joynal v. Meherulla (1942) 4 D. L. R. 381.
2. Abdul Majid v. Serajuddin (1952) 4 D. L. R. 478.

26 H to 26J. Repealed by the Act of 1938.

Enhancement of rent.

27. Presumption as to fair and equitable rent.—The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is provided.

Note.—This section is to be read with section 24 which provided that an occupancy raiyat was bound to pay rent at fair and equitable rates. It provided that the existing rent of an occupancy-raiyat should be presumed to be fair and equitable until the contrary was provided. Consequently if the landlord alleged that the existing rent was not fair or equitable, it was for him to produce evidence in support of his contention. It could only be altered or modified according to sections 29-35.

28. Restriction on enhancement of money-rents.—Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

29. Enhancement of rent by contract.—The money-rent of an occupancy-raiyat may be enhanced by contract subject to the following conditions :—

(a) the contract must be in writing and registered;

(b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

Provided as follows—

(i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the raiyat is chargeable with default in respect of the improvement only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Note.—This section laid down restrictiosn on enhancement of the money rent of an occupancy-raiyat by contract. In the first place, the contract must be in writing and registered. Secondly, even when the conditions of clause (a) were complied with, the enhancement must not exceed by more than two annas in the rupee the rent previously payable. Thirdly, if the rent was once enhanced by contract, no further enhancement could take place for 15 years from that date.

The proviso, however, controlled and modified the limitations imposed by the clauses (a), (b), and (c). The effect of proviso (i) was that where a contract could not be proved because it was not in writing or was not registered, the landlord was not debarred from recovering rent at the rate at which it had been paid continuously for three years or more immediately preceding the period for which the rent was claimed. The proviso was based on the principle that an oral contract acted upon should be put on the same footing as a contract in writing. It was necessary, however, that the enhanced rent should be actually paid during three years immediately the period for which the rent was claimed. Thus where rent was enhanced without a registered instrument and the enchanced rent was actually paid from 1314 to 1319 B. S.,

but not in 1320, it was held[1] that the landlord was not entitled to claim the enhanced rent from 1321 to 1324 B.S.; for section 29 only applied to a case where rent was actually paid for a period of three years proceding that for which rent was claimed. But proviso (i) did not control clause (b) or (c). So that payment for three years or for any length of time, at a particular rate, would not entitle the landlord to recover rent enhanced by more than two annas in the rupee or within 15 years of a previous enhancement.

Proviso (ii) saved contracts to pay rent at enhanced rates by more than two annas in the rupee in consideration of an improvement to be effected by or at the expense of the landlord and to the benefit of which the raiyat would not otherwise be entitled. The proviso was added to encourage improvements, additional rent for improvements being looked upon as interest on the capital spent. The enhanced rent, however, was payable only when the improvement had been effected and only for so long as it existed and substantially produced its estimated effect in respect of the holding, except when the raiyat was chargeable with default in respect thereof. In other words, to make the tenant liable for enhanced rent for an improvement, it was essential (a) that it was in respect of his holding; (b) that it was effected by or at the expense of the landlord; (c) that the tenant would not otherwise be entitled to its benefits, (d) that the improvement had actually been carried out; and (c) that the liability would last only for so long as the improvement existed and substantially produced the estimated effect in consideration of which the enhanced rent was contracted for, provided the tenant himself had done nothing to interfere with the improvement.

Proviso (iii) made another exception to the rule limiting enhancement within two annas in the rupee. It sometimes happened in different parts of the country that the raiyat held lands at specially low rates in consideration of their cultivating for the convenience of the landlord a particular

1. Janaki v. Enat (1922) 37 C. L. J. 489.

crop such as indigo. If the raiyat agreed to pay the enhanced rent in order to be freed from such an obligation, clause (b) would not affect the agreement. To justify an enhancement in excess of two annas in the rupee under that proviso, three things had to be proved : (a) that the raiyat held his land at a specially law rate of rent in consideration of cultivating a particular crop for the convenience of the landlord; (b) that he was released from the obligation of cultivating that crop; (c) that he considered the rent which he agreed to pay to be fair and equitable.

A contract to pay rent at an enhanced rate by more than two annas in the rupee, except in cases covered by the provisos, was void.[1] Where the rent contracted for exceeded the statutory maximum, the Court could not reduce it to the legal maximum. The contract was absolutely void.[2] In such cases the landlord would only get a decree for the original rent, i.e. at the rate which the tenant was paying previous to the illegal contract. The statute enacted in most explicit terms that there would be no enhancement of more than two annas in the rupee. So if there was an enhancement, however, small, of more than two annas in the rupee, there was a violation of the statute which could not be allowed. The principle de minimis non curat lex had no application to a prohibitory statute which said that the enhancement should in no case be more than two annas.[3] Foster J., observed that "the rule of section 29 of the Bengal Tenancy Act was intended to be a strict one which the Courts should not allow to be defeated or evaded.[4] But a stipulation embodied in a kabuliat to pay more than two annas in the rupee in settlement of a bonafide

1. Kristo v. Brojo (1897) I. L. R. 24 Cal. 895; Prabat v. Chirag (1906) I. L. R. 33 Cal. 607 at 608; Manindra v. Upendra (1908) I. L. R. 36 Cal. 604 at 608; Taramali v. Safatulla (1914) 22 I. C. 854 : Nafar v. Rahaman (1916) 23 C. L. J. 580.
2. Kristo v. Brojo (1897) I. L. R. 24 Cal. 895; Manindra v. Upendra (1908) I. L. R. 36 Cal. 604 at 608; Taramali v. Safatulla (1914) 22 I. C. 854.
3. Gulmati v. Jago, A. I. R. 1929 Cal. 658 at 659.
4. Meyrick v. Dipa (1923) 75 I. C. 22 at 24.

dispute regarding the rate of rent[1] or the area of the tenancy[2] and to avoid further litigation was not an agreement to enhance within the meaning of section 29 (b).

The rule limiting enhancement to two annas in the rupee did not apply to the transferee of a non-transferable occupancy holding who took a settlement in order to get recognition from the landlord.[3] Thus where a non-transferable occupancy holding was purchased by a stranger who agreed to pay one rupee in excess of the original rent while he procured the landlord's recognition, it was held that the agreement was not in contravention of section 29, inasmuch as the holding not being transferable, the transferee was not a tenant and consequently there was not rent payable by him which was enhanced.[4] This exception could not be claimed by a landlord since the enactment of the Amending Act of 1928, by which all occupancy holdings were made transferable. Moreover, section 29 did not apply where the status of an occupancy raiyat had been raised to that of a raiyat at fixed rent, although the rent, newly fixed in consideration of the change of status, contravened the two annas rule.[5]

30. Enhancement of rent by suit.—The landlord of a holding held at a money—rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely) :—

(a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in

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1. Sheo v. Ram (1981) I. L. R. 18 Cal. 333; Nath v. Damri (1900) I. L. R. 28 Cal. 90 : Kedar v. Maharaja (1909) 11 C. L. J. 106; Bata v. Manindra (1914) 19 C.W. 321; Askaran v. Deolal, A. I. R. 1929 Pat. 568 F. B.
2. Dabiruddin v. Midnapore Zemindary (1920)57 I. C. 850.
3. Ferasat V. Priamboda (1920) 69 I. C. 414.
4. Sarat V. Shyam (1913) I. L. R. 39 Cal. 663 at 668 : Ferasat v. Priamboda (1920) 69 I. C. 414
5. Gur v. Keshwar (1916) I. P. L. J.76; Ram v. Sohrai (1919) 52 I. C. 20; Nagenbala v. Sridam, A. I. R. 1933 Cal. 69 Reaz v. Bijoy, A. I. R. 1935 Pat. 453.

the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;

(b) that there has been a rise in the average local price of staple food-crops during the currency of the present rent;

(c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or wholly or partly at the expense of, the landlord during the currency of the present rent; and

(d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

31. Rules as to enhancement on ground of prevailing rate.—Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court.

(b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in Schedule I to, and section 78 of the Code of Civil Procedure, 1908, by such Revenue-officer as the Provincial Government may authorise in that behalf by rules made under rule 9 in Order XXVI in Schedule I to the said Code ;

(c) in determining under this section the rate of rent payable by a raiyat, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account to determining the rate; and whenever it is found that by local custom any

description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(d) in ascertaining the prevailing rate of rent the amount of any enhancement authorised on account of a landlord's improvement shall not be taken into consideration;

(e) If a favourable rate has been determined under clause (c) for any description of raiyats, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;

(f) if the holding is held at a lump rental the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages."

31A. What may be taken in certain districts to be the "prevailing rate."—(1) In any district or part of a district to which this sub-section is extended by the Provincial Government by notification in the Official Gazette, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate.

Illustrations

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follows :

Bighas		Rs.	a.	p.
100	--------- at	1	0	0
200	---------at	1	8	0
150	-------- at	1	12	0
100	--------at	2	0	0
150	--------at	2	4	0
Total = 700				

Then Rs.2-4 is not the prevailing rate, because only 150 bighas, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 bighas, or less than half are held at that or a higher rate. Re.1-12 is the prevailing rate, because 400 bighas, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(b) The rates at which land of a similar discription and with similar advantages is held in a village are as follows :—

Bighas			Rs.	a.	p.
100	....	at	1	0	0
250	....	at	1	4	0
150	....	at	1	8	0
150	....	at	1	12	0
50	....	at	2	0	0
Total= 700					

Then for the reasons given in illustration (a), neither Rs.2 nor Re.1-12 is the prevailing rate, nor is Re.1-8 the prevailing rate, because only 350 bighas (exactly half) are held at Re.1-8 or at rates higher than Re.1-8. In this case Re.1-4 is the prevailing rate, because more than half the lands are held at Re.1-4 or higher rates and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(2) The Provincial Government may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.

(For elaborate discussion, see author's Bengal Raiyat, Chapter 6, section 1).

31B. Limit to enhancement of prevailing rate.—When the prevailing rate has once been determined by a Revenue officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b) and section 32.

32. Rules as to enhancement on ground of rise in prices.—Where an ehnacement is claimed on the ground of a rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison : provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a) the Court may, in its discretion, substitute any shorter periods therefor.

33. Rules as to enhancement on ground of landlord's improvement.—(1) Where on enhancement is claimed on the ground of a landlord's improvement—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this act ;

(b) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilising the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor-in-interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Rules as to enhancement on ground of increase in productive powers due to fluvial action.—Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Enhancement by suit to be fair and equitable.—Notwithstanding anything in sections 30 to 34, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

36. Power to order progressive enhancement.—If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.

37. Limitation of right to bring successive enhancement suits.—(1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March 1883, or if a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of rule 1 of Order XXIII in Schedule 1 to the Code of Civil Procedure, 1908.

Note.—Section 29 dealt with the rules relating to enhancement of rent of an occupancy raiyat by contract. Section 30 dealt with enhancement of rent by suit. Sections 31-37 laid down rules for the guidance of the Court in a suit for enhancement. But the provisions relating to enhancement of rent either by suit or contract were suspended since 27th August 1937 by section 75A of the Act, instroduced by the Amending Act of 1938.

Reduction of rent

38. Reduction of rent.—(1) An occupancy-raiyat may institute a suit for the reduction of his rent on one or more of the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

(a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual.

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, or

(c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent takesn by any one among a number of co-sharer tenants of a holding.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists

39. Price-lists of staple food-crops—(1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Provincial Government may from time to time direct, and shall submit them to the Board of revenue for approval or revision.

(2) The Collector may, if so directed by the Provincial Government, prepare for any local area like price-list relating to such past times as the Provincial Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the Official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Provincial Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct unless and until it is proved that they are incorrect.

(7) The Provincial Government shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

40. Repealed by the Amending Act of 1928.

40 A. Ibid.

Chapter—VI

Non-occupancy-raiyats

[The Chapter dealt with the rights and liabilities of raiyats not having a right of occupancy who were referred to in this Act as non-occupancy raiyats. The provisions of this Chapter were subject to sections 116 and 180(2).

This Chapter was no exhaustive. There were other sections in the act. e.g. sections 66, 77 and 155 which dealt with matters affecting non-occupancy raiyats. Moreover, in determining the rights and liabilities of non-occupancy raiyats, the question of custom and local usage had to be considered.]

41. Application of Chapter.—This Chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

42. Initial rent of non-occupancy-raiyat.—When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

43. Conditions of enhancement of rent.—The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46 :

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

44. Grounds on which non-occupancy-raiyat may be ejected.—A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely) :—

(a) (This clause was omitted by the Amending Act of 1949;)

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this

Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. Repealed by the Amending Acts of 1907 and 1908.

46. Conditions of ejectment on ground of refusal to agree to enhancement.—(1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat a draft of an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender a draft of an agreement to a raiyat under this section may file it is in the office of such Court or officer as the Provincial Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat in whom a draft of an agreement has been served under sub-section (2) executes the agreement and within one month from the date of service files it in the office from which is issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement of which a draft has been tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment subject to the provisions of this Act unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to play the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Note.—This section provided how a non-occupancy -raiyat might be ejected on the ground of his refusal to agree to an enhancement. It enabled a landlord to get enhancement, or in the alternative, ejectment. The proceedings under this section were not merely proceedings for ejectment but for a fair and equitable rent assessed by the Court. If the tenant refused to accept the agreement filed under the provisions of section 46, it was then alone that a suit for ejectment under that section could be commenced.[1]

Sub-section (1) laid down a general rule that no suit for ejectment on ground of refusal to agree to an enhancement could be instituted unless an agreement had been previously tendered to the raiyat and he had refused to execute the same within 3 months before the institution of the suit.

1. Port Canning v. Achhiruddin (1925) 43 C. L. J. 45.

Sub-section (2) provided for the mode in which the agreement should be tendered.

Sub-Section (3) was merely declaratory. It stated that when an agreement served upon the raiyat was executed and filed by him in the Court or in the office appointed in this behalf, the agreement should take effect from the commencement of the agricultural year next following. Registration was not necessary; mere execution of the agreement and filing in Court or office was sufficient to make it binding.

Sub-Section (4) provided that when an agreement was executed and filed by the raiyat, the Court or office should forthwith cause a notice to be served on the landlord of the fact that the agreement had been executed and filed by the raiyat.

Sub-section (5) declared that if the raiyat did not execute and file the agreement under the provisions of sub-section (3) he would be presumed to have refused to execute it.

Sub-section (6) provided that if the raiyat did not execute and file the agreement within one month from the date of service of the draft upon him, the landlord would be entitled to institute a suit for ejectment. In that suit the Court had to determine a fair and equitable rent for the holding, after taking into consideration the rents generally paid by the raiyats for similar lands (sub-section 9).

Sub-section (7) prescribed the period for which the rent so determined would remain in force, if the raiyat accepted it. If he accepted the rent determined by the Court, he was allowed to hold the land for 5 years. After the expiry of that period, he would be liable to ejectment under section 44 (d), unless he acquired in the meantime a right of occupancy.

Sub-sections 8 and 10 should be read together. If the raiyat did not agree to pay the rent determined by the Court, the Court must pass a decree for ejectment which would take effect from the end of the agricultural year in which it was passed.

47. Explanation or "admitted to occupation"—Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

Distinction between occupancy and non-occupancy raiyat—The limits of enhancement of rent in case of an occupancy raiyat, viz., (a) that the rent once enhanced by contract could not again be enhanced within 15 years, and (b) that it must not exceed 2 annas in the rupee, were absent in case of a non-occupancy raiyat. The rent of a non-occupancy-raiyat could be enhanced either by agreement out of Court, or by a suit for ejectment for refusal to agree to pay an enhanced rent; in that suit the Court might determine a fair and equitable rent. The landlord could not maintain a suit for enhancement of rent of a non-ocupancy raiyat on the ground of prevailing rate or of a rise in the price of staple food crops or of increase in the productive powers due either to the landlord's improvements or fluvial action, whereas such a suit was allowed against an occupancy raiyat under section 30 of the Act.

While an occupancy raiyat could be ejected only on the ground of breach of condition, a non-occupancy-raiyat could be ejected not only on this ground, but also on four other grounds viz. (a) that he used the land in a manner which rendered it unfit for the purposes of the tenancy; (b) that the term of the lease expired, in case he held under a registered lease; (c) that he refused to pay an enhanced rent settled by the Court; (d) that the term of 5 years had expired from the date of agreement to pay an enhanced rent settled under section 46, unless he, by that time, acquired a right of occupancy.

There was no statutory provision as to transferability of a non-occupancy holding except it was allowed by custom or local usage under section 183. Similarly, there was no provision in the Act as to heritability of a non-occupancy holding. But it was held[1] that apart from possible exceptions, it was heritable.

The right of an occupancy raiyat to sub-let could not be affected by any contract[2]; but there was no such provision for a non-occupancy -raiyat.

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1. Midnapore Zemindary v. Hrishikesh (1914) I. L. R. 41 Cal. 1108 F. B.
2. The Bengal Tenancy Act, 1883, Sec.178 (3) (d).

CHAPTER—VII

Under-raiyats

[The Chapter dealt with the rights and liabilities of the under-raiyats. An under-raiyat, populary known as korfa tenants, was a tenant holding either immediately or mediately under a raiyat. He could also hold under another under-raiyat of obtain the same status and rights as the under-raiyat of the first degree. There was no limit of sub-infeudation of rights in land under the Bengal Tenancy Act. The grant of under-leases of any degree was recognised by the definition of an under-raiyat[1]. This Chapter was amended in 1928 and 1938 to give more rights and privileges to an under-raiyat.]

47A. Application of Chapter VII to all under-raiyats.—The provisions of this Chapter shall apply to all under-raiyats whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act. 1928.

Note.—This section was inserted by the Act of 1938 to give retrospective effect to the provisions of this Chapter. Speaking about the object of the amendment the Revenue Minister observed : "What is sought to be conferred is to give retrospective effect with regard to certain rights conferred under Chapter VII on under-raiyats. Doubts were expressed in some of the High Court decisions as to whether these rights were conferred actually on under-raiyats created before 1928".

As a result of the amendment the provisions of Chapter VII of the Act were given retrospective operation and made applicable to all under-raiyats irrespective of the question whether the tenancies were created before or after the Amending Act of 1928.

48. Liability of under-raiyat to pay rent.—When an under-raiyat is admitted to the occupation of land, he shall, subject

1. Parushulla v. Sital (1915) 19 C. W. N. 1110.

to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission :

Provided that the rent or rate of rent agreed upon shall not be less than the rent or rate of rent payable by the raiyat to his landlord.

Note.—The initial rent of an under-raiyat was left to contract between the parties provided that such rent should not be less than what was payable by the raiyat to his landlord. The proviso was added to safeguard the interest of the landlord. Unless this safeguard was provided, a raiyat by taking salami from the under-raiyat would let out holding or part of it to an under-raiyat at a lower rent and then he would abandon the holding. In such a case the superior landlord would be bound to take the rent so agreed if he would play five times the rent as salami.[1]

48A. Enhancement of rent of under-raiyat.—The rent of an under-raiyat shall not be enhanced except under the provisions of section 48B or 48D or section 48G, as the case may be.

48B. Enhancement by contract.—(1) The money rent of an under-raiyat may be enhanced by a written registered contract :

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-raiyat, except in the following cases, namely :—

(i) when an under-raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of his landlord and to the benefit of which the under-raiyat is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the under-

1. The Bengal Tenancy Act, 1885, Sec. 87(5).

raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(ii) when an under-raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord and the under-raiyat agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

Note.—The money-rent of an under-raiyat without occupancy right could be enhanced by contract, subject to the following conditions—

(a) The contract must be made by a registered instrument.

(b) The enhanced rent must not exceed by more than four annas in the rupee the rent previously payable by an under-raiyat.

The four annas limit, however, would not apply in the following cases :—

(a) when the under-raiyat agreed to pay enhanced rent in consideration of some improvement at the expense of his land-lord and to which he was not otherwise entitled. But the enhanced rent was payable only when the improvement was effected and only so long as, but for the default of the under-raiyat, the improvement existed and produced its estimated effect.

(b) when the under-raiyat agreed to pay enhanced rent in consideration of his being released from the obligation of cultivating a particular crop.

(c) The rent once enhanced by contract could not be enhanced again within 15 years.

48C. Ejectment of under-raiyat. — An under-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

(a) (The clause was omitted by the Amending Act of 1949);

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;

(c) on the ground that the term of his lease has expired, when he holds the land under a written lease;

(d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or

(e) on the ground that he does not agree to pay the rent determined by the Court under sub-section (4) of section 48D :

Provided that an under-raiyat shall not be liable to ejectment on the grounds specified in clause (c) or clause (d)—

(i) if the under-raiyat has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon.

(ii) in the case of under-raiyats other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid for partners.

48D. Enhancement by suit.—(1) The landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the Court.

(2) The Court shall determine what rent is fair and equitable for the holding; provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-raiyat if he agrees to pay the rent so determined. If the under-raiyat agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

48E. Application for restitution by under-raiyat.—When a landlord has ejected an under-raiyat on the grounds specified in clause (c) or clause (d) of section 48C, the under-raiyat may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

48F. Incidents of holding of under-raiyat.—The holding of an under-raiyat shall descend in the same manner as other

immovable property, but subject to the provisions of sub-section (2) of section 48G, shall not be transferable except with the consent of the landlord.

Note.—This section, inserted by the Act of 1928, gave two rights to an under-raiyat, namely that it was heritable, but not transferable without the consent of his immediate landlord. The Act of 1938, however, removed the restriction as to transfer of a holding of an under-raiyat having a right of occupancy who was given the statutory right to transfer his holding like an occupancy raiyat.

48G. Occupancy rights of under-raiyat.—(1) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

(2) Every under-raiyat who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a raiyat with a right of occupancy, as set forth in —

(i) Chapter V other than those conferred or imposed by sections 20, 21 and 22.

(ii) sections 65, 116 and 178, so far as possible, and

(iii) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-raiyat for the purposes of the said section or Chapters.

(3) The interest of an under-raiyat who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an under-raiyat who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

Note. —This section was inserted by the Act of 1928; prior to the amendment, there was no provision regarding occupancy right of an under-raiyat except illustration (2) of section 183, which contemplated acquisition of occupancy right by an under-raiyat by custom or usage.

Sub-section (1) gave statutory recognition to the customary right. An under-raiyat who, prior to 21st February, 1929, acquired a right of occupancy by custom, continued after that date to have the right by statute.

Sub-section (2) provided that an under-raiyat with occupancy right had as against his immediate landlord all the rights and liabilities of an occupancy raiyat as set forth in Chapter V (except those conferred or imposed by sections 20 to 22, 65, 116 and 178 and Chapter XIV). Thus in respect of the following matters, the incidents of such an under-raiyat were the same as those of an occupancy raiyat :—rights in respect of the use of land.[1] rights in trees,[2] obligation to pay fair and equitable rent,[3] protection from eviction except on specified grounds,[4] devolution of the occupancy right on death,[5] ehhancement of rent.[6], reduction of rent,[7] protection from ejectment for arrears of rent,[8] surrender,[9] inability to acquire right of occupancy in the proprietor's private land,[10] right to deposit the landlord's rent to prevent or set aside a sale of the Court for the latter's arrears,[11] and restrictions by agreement.[12] Neither an under-raiyat did acquire the status of a settled raiyat by continuous holding of land in any village for 12 years,[13] nor occupancy right in lands like the settled raiyats.[14] Their holdings were not regarded as occupancy holdings and they were not regarded as occupancy raiyats for the purpose of section 22. Further, their interests were not "protected interests" within the meaning of section 160 (d).

1. The Bengal Tenancy Act, 1885, Sec. 23.
2. Ibid, Sec. 23A.
3. Ibid. Sec. 24.
4. Ibid, Sec. 25.
5. Ibid. Sec. 26.
6. The Bengal Tenancy Act. 1885, Sections 29 and 30.
7. Ibid, Sec. 38.
8. Ibid, Sec. 65.
9. Ibid. Sec. 86.
10. .Ibid. Sec. 116.
11. Ibid, Chapter XIV.
12. Ibid. 178.
13. Ibid. Sec. 20.
14. Ibid. Sec.21.

Sub-section (2) was amended by the Act of 1938 in two respects :—substitution of "and 22" in place of "22, 26A to 26J" in clause (i), and (b) omission of the figure "86" in clause (ii). The effect of omission of sections 26A to 26J in clause (i) was that an under-raiyat with occupancy right stood on the same footing as an occupancy raiyat in the matter of all forms of transfer. Thus he could transfer his holding in any way he liked whether by sale, gift, lease or mortgage, subject to those provisions of law which were binding upon the occupancy raiyat. The reason for the amendment of clause (ii) of sub-section (2) by the omission of the figure "86" was that the provisions of section 86 (surrender) were extended to an under-raiyat.

Sub-section (3) was enacted to safeguard the interest of the superior landlord. If the interest of an under-raiyat having right of occupancy was made a protected interest, it would have the effect of impairing the security of the landlord's interest.

Sub-section (1) declared that the provisions as to enhancement and ejectment as laid down in sections 48A-48E were not applicable to an occupancy under-raiyat for he was governed by the provisions of Chapter V. For instance, a contract for enhancement of rent of such an under-raiyat was subject to two annas limit[1] and not four annas. [2].

48H. Repealed by the Amending Act of 1938.

49. Mortgage by under-raiyat.—(1) Notwithstanding anything contained in section 48F, an under-raiyat may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy raiyats and the provisions of that section shall apply so far as may be to under-raiyats as if they were occupancy-raiyats.

(2) Such mortgage shall not be binding upon the landlord of the under-raiyats.

1. The Bengal Tenancy Act, 1885, Sec. 29.
2. Ibid, Sec. 18B.

Note.—This section, introduced by the Act of 1928, was an exception to the rule in section 48F, which prohibited the transfer of the holding of an under-raiyat except with the consent of the landlord. Since then an under-raiyat could, without the consent of the landlord, enter into a complete usufructuary mortgage as provided in section 26G. But such mortgage executed by him was not binding upon his landlord. The result was that if such a mortgage was executed without the consent of the landlord, the landlord could eject the mortgagee as a trespasser without notice, as soon as he was entitled to enter into possession as against the mortgagor, either by virtue of purchase or ejectment or abandonment by the latter.

CHAPTER —VIIA.

Restrictions on alienation of land by aboriginals.

[This Chapter was enacted for the protection of aboriginals against imprudent transactions relating to their lands. It prohibited certain classes of transfers and imposed restrictions on others. The enactment being based on public policy, the aboriginals could not waive the benefit of these provisions.[1]]

49A. Application of Chapter.—(1) (This clause was omitted by Notification No. 317-L of 5th April 1950).

(2) The Provincial Government may, from time to time, by notification published in the official Gazette, declare that the provisions of this Chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this Chapter, namely :—

Sonthals, Bhuiyas, Bhumijes, Dalus, Garos, Gonds, Hadis, Majangs, Hos, Kharias, Kharwars, Kochs, (Dacca Division). Koras, Maghs (Bakarganj district), Mal and Sauria Paharias, Meches, Mundas, Mundais, Oraons and Turis.

(3) The publication of a notification under sub-section (2) shall be conclusive evidence that the provisions of this Chapter have been duly applied to such castes or tribes.

(4) The Provincial Government may, by a like notification, declare that this Chapter shall, in any district or local area, cease to apply to any caste or tribe to which it may have been applied under sub-section (2).

(5) Notwithstanding anything elsewhere contained in this Act, the Provincial Government may, in the manner provided for in sub-sections (2) and (4), declare that the provisions of this Chapter applicable to aboriginal raiyats shall apply so far as may be, or cease to apply to raiyats within such colonisation areas in the Sundarbans as may be specified in the notification.

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1. Joggeshwar v. Jhapal (1923) 28, C. W. N. 556 at 558.

49B. Restrictions on transfer of tenant-rights :—No transfer by an aboriginal tenure-holder, raiyat or under-raiyat of his rights in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement shall be valid to any extent except as provided in this Chapter.

49C. Lease by tenure-holder :—An aboriginal tenure-holder may grant a lease to another aboriginal domiciled or permanently residing in East Bengal, to hold the land as a tenure-holder, or to cultivate. It as a raiyat, in accordance with the provisions of this Act.

49D. Sub-letting by raiyat.—An aboriginal raiyat may sub-let his holding to another aboriginal domiciled or permanently residing in East Bengal, to cultivate it as an under-raiyat.

49E. Usufructuary mortgage by tenure-holder, raiyat or under-raiyat.—(1) An aboriginal tenure-holder, raiyat or under-raiyat may enter with another aboriginal domiciled or permanently residing in East Bengal, into a complete usufructuary mortgage in respect of any land under his own cultivation, in any period which does not and cannot, in any possible event, by an agreement, express or implied, exceed seven years, or the period of his own right whichever is less:

Provided that every mortgage so entered into shall be registered under the Registration Act, 1908.

(2) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

49F. Application to Collector for transfer in certain cases.—(1) If in any case—

(a) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal raiyat is unable to sub-let his holding as provided in section 49D, or an aboriginal tenure-holding, raiyat or under-raiyat is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (1), or

(b) an aboriginal tenure-holder, raiyat or under-raiyat desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not such an aboriginal, or in case (b), to transfer the same by private sale, gift or will to any person, and the Collector may pass such order on the application as he thinks fit.

(2) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

49G. Courts not to register, or recognise as valid, transfers in contravention of this Chapter.—No transfer by an aboriginal tenure-holder, raiyat or under-raiyat in contravention of the provisions of this Chapter shall be registered or in any way recognised as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

48H. Power to Collector to set aside improper transfers by tenure-holder, raiyat or under-raiyat.—(1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, raiyat or under-raiyat in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (1), or section 49E, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion : Provided that (a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years and (b) he is given an opportunity of showing cause against the order of ejectment.

(2) When the Collector has passed any order under sub-section (1), he shall either—(a) restore the transferred land to

the aboriginal tenure-holder, raiyat or under-raiyat, or his heir or legal representative, or (b) failing the transferor of his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J; provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal domiciled or permanently residing in East Bengal; and, if the Collector is unable to make such settlement within the said period, an unrestricted right of settlement will vest in the landlord.

49J. Resettlement of certain tenancies.—(1) whenever—

(a) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the land-lord under clause (b) of sub-section (2) of section 49H, or

(b) an aboriginal tenant surrenders his tenancy or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of sections 86, 86A and 87,—

(i) settle the tenancy, or a portion thereof, with an aboriginal domiciled or permanently residing in East Bengal, or

(ii) with the approval of the Collector in writing, settle the same with any other person or retain it in his own possession : provided that such approval shall not be withheld if the Collector is satisfied that the surrender or abandonment referred to in this sub-section is not made with the object of evading the provisions of sections 49B, 49E or 49F.

(2) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (1), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

49K. Restriction on the sale of tenant's rights under order of Court.—(1) Notwithstanding anything contained in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, raiyat or under-raiyat in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order :

Provided that any tenure or holding belonging to an aboriginal may be sold in accordance with the provisions of sub-section (2) in execution of a decree of a competent Court to recover an arrear of rent which has accrued in respect of the tenure or holding.

(2) When a decree for an arrear of rent which accrued in respect of a tenure or holding of an aboriginal tenant has been passed, such decree shall be executable solely by the Collector and the Court shall, on application made in this behalf by the decree-holder, send the decree to the Collector for execution and the Collector in execution of the said decree may, in his discretion, —

(a) sell the said tenure or holding, or

(b) elect the said aboriginal tenant and settle the said tenure or holding or a portion thereof with another aboriginal tenant on payment of the decretal amount by such other aboriginal tenant, or

(c) place the landlord in possession of the said tenure or holding or a portion thereof for a period not exceeding seven years;

and if the Collector, in executing a decree under this sub-section, —

(i) sells the said tenure or holding, he shall, subject to the provisions of sub-section (3), follow the procedure applicable to sales of land by a Civil Court in execution for decree for arrears of rent ;

(ii) places the landlord in possession of the said tenure or holding or any portion thereof for any period the decree shall, at the end of such period, he deemed to have been satisfied in full and the Collector may then restore the said tenure or holding or portion to the aboriginal tenure-holder, raiyat or under-raiyat, as the case may be, against whom the said decree was

executed or to the successor-in-interest of such tenure-holder, raiyat or under-raiyat or may settle it with another aboriginal :

Provided that no portion of a tenure or holding shall be sold or settled by the Collector under this sub-section if such sale or settlement would result in bringing the rent for such portion below two rupees in the case of tenure or one rupee in the case of a holding.

(3) (a) Before issuing a proclamation for the sale of any tenure or holding in execution of a decree referred to in sub-section (2), the Collector shall after hearing the decree-holder and the judgment-debtor divide the tenure or holding into such number of smaller areas to be specified as lots as the Collector thinks fit for the purpose of being sold separately and shall specify the lots in the proclamation ;

(b) when any tenure or holding has been advertised for sale by the issue of a proclamation referred to in clause (a), each lot specified in the proclamation shall be put up to auction separately and as soon as the total amount of the bid reaches a sum sufficient to liquidate the amount of the decree and costs including the cost of sale, the sale shall be stopped and no further lots shall be knocked down, and if even after all the lots have been separately put up to auction the total amount of the bid does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, all the lots shall be put up to auction together.

(4) Before restoring or settling a tenure or holding under sub-section (2), the Collector may, if he is satisfied that the rent of the tenure or holding has been illegally enhanced or is substantially in excess of the rent payable by tenants of the same class for lands of the same description with similar advantages in the vicinity, pass an order altering the amount of the rent of the tenure or holding to an amount which he considers to be fair.

(5) Notwithstanding anything contained in this Act, where a portion of a tenure or holding is sold or settled under sub-section (2),—

(a) the Collector shall, before confirming the sale or making the settlement, distribute the rent of the tenure or holding over such portion and the remaining portion or portions of the tenure or holding and in making such distribution the Collector shall follow, as far as may be, the procedure laid down in section 88; and

(b) the division of the said tenure or holding consequent upon such sale or settlement and the distribution of the rent of such tenure or holding made under clause (a) shall, subject to the provisions of section 49M, be binding on the tenants and the landlord concerned.

(6) Nothing in this section shall affect,—

(a) any right to execute a decree for the sale of any such tenure or holding or the terms or conditions of any bona fide contract relating thereto if such decree was passed or such contract was registered–

(i) (This sub-clause was omitted by Notification No.317-L., dated 5th April, 1950),

(ii) in the case of castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under sub-section (2) of section 49A in respect of such castes or tribes, or

(b) any right for the sale of any such tenure or holding for the recovery of any dues which are re-coverable as public demands.

49L. Stay of execution of decrees.—If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, raiyat or under-raiyat in respect of such tenancy or portion thereof, other than a decree to recover an arrear of rent which has accrued in respect of such tenancy the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due.

49M. Appeal and revision.—(1) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made

under sections 49F, 49H, 49J or 49K by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final :

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commission.

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall be to such officer as the Provincial Government may appoint in this behalf, and the orders of such officer on appeal shall be final :

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the Provincial Government may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

49N. Bar to suits.—Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

49-O. Saving of certain transfers.—Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, raiyat or under raiyat of his tenure or holding, or any portion thereof made bona fide,—

(a) (This clause was omitted by Notification No.317-L of 5th April, 1950);

(b) in the case of castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes.

CHAPTER —VIII

General provisions as to Rent.

Rules and presumptions as to amount of rent

[This Chapter embodied a variety of miscellaneous rules relating to the character, amount, and payment of rent. Section 50 dealt with the rules and presumptions as to fixity of rent. Section 51 provided that the amount of rent and the conditions of the holding were to be presumed to be the same as in the previous year. Section 52 stated the rules relating to alteration of rent on account of alteration of area. Sections 53-55 dealt with the rules as to the manner, time and place of payment of rent and how the payments could be appropriated. Sections 56-60 contained provisions relating to receipts and accounts. Sections 61-64 provided for deposit of rent, while section 65A laid down the penalty for refusing to receive such deposit or rent remitted by money order. Sections 65 and 66 related to the remedies for arrears of rent. Sections 67 and 68 allowed interest or damages for arrears. Sections 72 and 73 related to liability for rent on transfer and sections 74 and 75 dealt with illegal cesses and other impositions.]

50. Rules and presumptions as to fixity of rent.—(1) Where a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be laible to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement :

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the fore-

going presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Note.—This section laid down the rules of evidence as to how a tenure-holder or a raiyat could prove fixity of rent. Fixity of rent could be proved by contract under the general law. But where there was no express contract, a tenant could prove fixity of rent by proving that the rent or rate of rent had not been changed since the Permanent Settlement. If he was unable to do so, he could take recourse to the presumption under sub-section (2) by proving that it had not been changed during the last 20 years. But these rules of evidence applied only to a tenure-holder and a raiyat and not to an under-raiyat, nor did they apply to a tenure held for term of years or determinable at the will of the landlord.

Sub-section (1) contained the substantive rule regarding protection from enhancement.[1] It referred to the fact that whatever the contract might be between the parties where the rent had not been changed from the time of the Permanent Settlement the conditions laid down in it should prevail.[2]

Sub-section (2) laid down the rule of presumption. It was intended to provide in suits and proceedings under this Act, an easy method of determining the rights of the parties.[3] It was obligatory upon the Court to apply this presumption in suits under this Act but the Court was not bound to do so in suits under the general law[4]. The presumption under this sub-

1. Krishna v. Nilmadhab (1922) 36 C. L. J. 382.
2. Jitendra v. Banku (1929) 32 C. W. N. 105 at 107.
3. Nityananda v. Nanda (1910) 13 C. L. J. 415.
4. Chitpore v. Hari (1930) 34 C. W. N. 675.

section did not rest upon actual payment of rent during 20 years at a uniform rate. It speaks whether the tenant held at a rent or rate of rent which had not been changed during 20 years immediately before the suit or proceedings [1].

In order to prove that a tenant was holding land at a uniform rate of rent for 20 years, it was not necessary that he should prove payment of rent for all those years and produce dakhilas for every one of those 20 years [2]. When receipts at a uniform rate during the period of 20 years were filed but receipt for some years in the period were missing, uniform payment at the same rate in the years for which no receipt was filed might still be proved by other evidence and from the surrounding circumstances[3]. The presumption did not apply where a record-of-rights was finally prepared [4].

Sub-section (3) laid down that the continuity of the holding from the time of the Permanent Settlement was not affected by sub-division or amalgamation[5].

Sub-section (4) provided that this section did not apply to a tenure held for a term of years or when a tenure was determined at the will of the landlord.

51. Presumption as to amount of rent and conditions of holding.—If a question arises as to the amount of a tenant's rent or the condition under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Note.—This section referred to cases where there was no written contract. It laid down a rule of presumption of general application to all tenants with regard to the amount of rent and the conditions of tenancy in any agricultural year and provided that law would presume that both of them were the

1. Mohini v. Preonath (1922) 35 C. L. J. 309 at 312.
2. Golum Hossain v. K. S. Bonerjee (1925) 30 C. W. N. 520 at 521.
3. Elahee v. Roppum (1867) 7 W. R. 284; Satis v. Nil Madhub (1922) 37 C. L. J. 598, Golam Hossain v. K. S. Bonerjee (1925) 30 C. W. N. 520.
4. Sec. 115.
5. Abhoya v. Rajani (1915) 22 C. W. N. 904 at 909.

same as in the preceding year. It applied not only in respect of a particular year, but also to each successive year one after another, until its operation was arrested by proof of alteration in the condition of the tenancy[1]. This section also applied in case of holding over.

Alteration of rent on alteration of area.

52. Alteration of rent in respect of alteration of area.—

(1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made: Provided that no Court shall decree any addition of rent under this clause unless it is satisfied that there has in fact been in increase in the actual area of the tenure or holding since the rent previously paid was settled : and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(1A) In determining in a suit under clause (a) of sub-section (1) whether there has been an increase in the actual area of the tenure or holding, the Court shall inquire as to whether the present areas of other tenures or holdings in the vicinity which were settled at or about the same time or on the same standard of measurement as the tenure or holding in suit, show increases in area compared with the area originally

1. Rajabala v. Srish (1914) 25 I.C. 552.

settled similar to that alleged in respect of the tenure or holding in suit : if such increases are found to exist, it shall be presumed (notwithstanding anything contained in any contract) that there has in fact been no increase in the actual area of the tenure or holding in suit since the rent previously paid was settled.

(1B) When in a suit an increase in the actual area of the tenure or holding is sought to be proved under clause (a) of sub-section (1), the Court shall inquire as to whether the present area of the tenure or holding in suit is within the same defined boundaries as set forth in the kabuliyat or the patta at the inception of the tenancy; and if the Court finds that the present area of the tenure or holding in suit is within such boundaries no increase of rent shall be granted on account of increase of area unless an equivalent reduction of rent on account of reduction of area has been granted in respect of one or more of the contiguous tenures or holdings:

Provided that the provisions of this sub-section shall not apply to any suit in respect of any tenure or holding of which any portion of the boundaries set forth in the kabuliyat or the patta comprises a river or sea or land held khas by the landlord or the Crown.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to —

(a) the origin and conditions of the tenancy, for instance whether the rent was a consolidated rent for the entire tenure or holding ;

(b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(c) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the land of the holding exclusive of such excess area.

(6) When in a suit under this section the landlord or tenant proves that—

(i) al or about the time when the area was recorded in any patta or kabuliyat there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,

(ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement.

Note.—The proviso to sub-section (1) and sub-sections (1A) and (1B) were added by the Bengal Tenancy Second Amendment Act, 1939. Sub-section (1B) was again amended by the Act of 1940. Sub-section (6) was substituted by the Act of 1928.

The object of this section was to provide principles to regulate the alteration of rent on alteration of area. The principle was that, if a tenant was let into occupation of a certain quantity of land for a certain lump rent, or at a certain rate of rent, and if he afterwards acquired more land over and above what was originally let out, the tenant was liable to pay additional rent for the excess area, while a tenant was entitled to a reduction of rent in the contrary case.

Sub-section (1) enacted that every tenant would be liable to pay additional rent for the excess area. But the landlord began to abuse this provision of the law; they claimed additional rent on what was represented as an increase in the area of land but which was, in fact, only the consequence in the change in the standard of measurement and fraudulently adduced misleading evidence in Court to cheat the tenants[1].

To prevent this mischief going further section 52 was amended by the Act of 1939. The landlord was only entitled to get additional rent for an additional area when he could prove to the satisfaction of the Court that "there had in fact been an increase in the actual area of the tenure or holding since the rent previously paid was settled".

Under sub-section (1A) the landlord could not claim additional rent, if other tenancies in the vicinity, which were settled about the same time when the tenancy in suit was settled and on the same standard of measurement, showed a similar increase in area, as a result of the measurement upon which the land-lord relied.

If there was a patta or kabuliyat stating the boundaries of the holding at the inception of the tenancy, the landlord could not claim an increase of rent on account of enhancement of the area, if the area of the holding was within such boundaries, unless some contiguous tenant obtained reduction of rent from him on account of an equivalent reduction of area. But the landlord could get additional rent for additional land

1. Bengal Legislative Assembly Proceedings, 1939, Vol. LIV. No.5, p.373.

found within the defined boundaries if any portion of it, set forth in the kabuliyat or the patta, comprised a river or sea or land held khas by the landlord or the Crown. The reason for this exception was that there was just a possibility of the tenant having overstepped his original area and added more land thereto by making acquisitions from the river or sea or from the landlord's or Crown's khas territory.

Sub-section (2) enumerated the considerations for the guidance of the Court in determining the area for which the tenant paid rent. The following illustrations were given in the Draft Bill :- (1) A, a raiyat held his land at one rupee per bigha and was paying an annual rent of Rs.17 for 17 bighas. A measurement showed that he held 23 bighas, and the whole of this land was of the same quality. His rent could be increased to Rs. 23. (2) A, a raiyat had a holding usually described in the jama-wasil-baki papers and the raiyat's receipts as comprising 27 bighas and the rent paid for which was Rs. 33-12. No measurement of this holding had at any time been made and there was no allegation that its area had been diminished by diluvion; but 15 bighas of land clearly distinguishable was shown by measurement to have been added to the holding by alluvion. A was liable to pay additional rent for the 15 bighas. (3) A was let into possession of a holding in 1860 under a written lease which described the holding as comprising 37 bighas of land and gave the boundaries. The land was situated in a cultivated village and the boundaries were ascertainable and definite. In 1880, the land within those boundaries as measured and found to be 45 bighas. A was not liable to pay additional rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease. (4) A was let into possession of a holding in 1850 under a written lease which described the holding as comprising 50 bighas, more or less and gave the boundaries. The land was situated in a village which in 1850, consisted chiefly of uncleared jungle and the boundaries were inexact and indefinite. In 1880 A was found to be in possession of 200 bighas of cultivated land to which the description by boundaries was applicable. A was laible to pay additional rent.

Sub-sections (3) and (5) dealt with the rules for determining the extent of additional rent that the landlord should be entitled to, if he succeeded in proving increase of area. Sub-section (3) declared that the primary basis was the prevailing rate in the vicinity but the Court was not bound to allow additional rent at that rate[1]. Sub-section (5) laid down the condition under which the Court would decree the additional rent with reference to the average rate for the remainder of the disputed holding itself.

Sub-section (4) provided the rule to be followed in computing the amount of reduction or abatement of rent in case of diminution of area. But it was not necessary to enquire about the yearly value in case of abatement of rent on account of diluvion in view of section 86A(1).

Sub-section (6) laid down rule of evidence for the benefit of both the landlord and tenant. It laid down the conditions on proof of which the landlord should be entitled to a presumption that the tenancy was created after measuring the land. "Conversely", said the Member in charge of the Bill, "in the case of a tenant if he asks for abatement of rent on the ground that the area is in defect, when the landlord claims that the land was settled at a lump rental, the tenant can take advantage of this presumption". In order to get the benefit of the presumption that the area was settled by measurement, either of the two facts must be proved : (a) that at the time when the area was recorded in the patta or kabuliyat, it was the practice to settle the land after measurement; or (b) that the area stated in the counterfoil receipts corresponded with the area entered in the rent-roll and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared.

Payment of rent

53. Instalments of rent—Subject to agreement or established usage, a money rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agriculgural year.

1. Ejel v. Felai (1914) 21 C. L. J. 309.

Note.—This section applied only to money rent; produce rents were excluded. Rent did not accrue from day to day but fell due on the last day of each quarter of the agricultural year. The effect was that a suit for rent for a quarter instituted before the expiration of that quarter was premature[1]. Again, as rent fell due only at the end of each quarter, an auction purchaser of a tenure or holding was liable for the rent of the whole of the instalment even though he purchased it sometimes towards the end of the period in respect of which the instalment was due [2].

54. Time and place for payment of rent.—(1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made —

(i) at the landlord's village office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money-order in the manner prescribed by rules made by the Provincial Government.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form.

(5) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

1. Abbas v. Premsukh (1919) 58 I. C. 878.
2. Satyendra v. Nilkantha (1893) 21 Cal. 383.

Note.—This section was substituted for the old one by the Act of 1928. The amendment of this section was intended to remove the practical difficulties which discouraged the tenants from paying their rent by money-order and caused the landlords to dislike the system of payment. It was made clear that a tender made at the landlord's village office should be sufficient, and that a postal receipt of a money-order would be presumed by the Court as tender of rent by the tenant. The Select Committee's proposal to insist on a post-office certificate of the landlord's refusal to accept a rent money-order was not adopted; because it was not practicable to obtain such a certificate and, even if it could be obtained it would not be evidence unless formally proved. The reason which made the landlords reluctant to accept rents tendered by postal money-order and thus discouraged the tenants from making use of this method, was removed by providing in sub-section (4) that the landlord's acceptance of such rent should not be treated as admission or evidence as regards the particulars of the tenancy set forth in the money-order or operate as a waiver of his rights under the clauses relating to the transferability of occupancy holdings [1].

Sub-section (1) fixed the time for payment or tender of rent. If it was not paid or tendered before the sunset of the day on which it fell due, it became an arrear of rent. Sub-section (2) specified the places where payment or tender could be made. Sub-section (3) laid down a rule of evidence raising a rebuttable presumption of tender from a postal receipt of money-order.

55. Appropriation of payments.—When a tenant makes a payment on account of rent, such payment shall be credited towards the arrears, if any, the recovery of which is not barred by law for the time being in force, and the balance, if any, after the arrears have been satisfied, and where there is no arrear, the whole amount, shall be credited as the rent of the current year.

1. Notes on clause 36.

Receipts and accounts

56. Tenant making payment to his landlord entitled to a receipt.—(1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoils shall specify such of the several particulars shown in schedule II to this Act as can be specified by the landlord at the time of payment :

Provided that the Provincial Government may, from time to time, prescribed or sanction a modified form, either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

57. Tenant entitled to full discharge or statement of account of close of year.—(1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account, specifying the several particulars shown in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Provincial Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.—(1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars required by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuse or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year required in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be laible to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine

under sub-section (3) or awarding compensation under sub-section (5); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section the Collector shall have power to summon, and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908.

(9) The existance of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 57, and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 56.

Note.—Sub-section (1) of section 56 declared that a tenant making a payment of rent was entitled to obtain forthwith from the landlord a written receipt for the amount paid by him signed by the landlord and sub-section (4) raised a rebuttable presumption in favour of the tenant that the landlord received payments as full acquittance of his demands upto date, if the receipt did not contain all the particulars.

Section 57 provided that where the landlord admitted to have received rent up to the end of the agricultural year, the tenant was entitled to obtain a receipt in full discharge of all rent free of charge or where the landlord did not so admit, the tenant was entitled to receive a statement of account.

Section 58 prescribed the penalties to which the landlord was liable for withholding the receipt of payment as required by section 56, or statement of account as required by section 57, as well as for failure to prepare and retain a counterfoil or copy of the receipt or statement as required by sections 56 and 57. Sub-section (9) stated the circumstances which could not be set up as plead in defence.

59. Provincial Government to prepare forms of receipt and account.—(1) The Provincial Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under sections 56 to 58.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Provincial Government thinks fit.

60. Effect of receipt by registered proprietor, manager or mortgagee.—Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent

61. Application to deposit rent in Court.—(1) In any of the following cases, namely :—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or

(d) when the tenant entertains a bona fide doubt as to who is entitled to receive the rent;

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered and the name of his common agent, if any, in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI in Schedule 1 to the Code of Civil Procedure, 1908, by the tenant, or, where he is not personally cognizant of the facts of the case by some person so cognizant; and shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount.

Note.—Sub-section (1) stated that a tenant could deposit rent in Court in the following 4 cases :—

(1) when the landlord refused to accept a tender or to grant a receipt for the same;

(2) when from the previous conduct of the landlord the tenant had reason to believe that the landlord would not accept payment or grant receipt;

(3) when the joint receipt of all the co-sharers was not obtainable and there was no person authorised to receive rent on behalf of all of them ;

(4) when the tenant had a bona fide doubt as to who was entitled to receive rent.

Sub-section (2) laid down the procedure to deposit rent. The deposit must be accompanied by an application to the Court asking for permission to deposit the amount. The amount of deposit must not be less than what was actually due. The application must state one or more of the 4 grounds specified in sub-section (1) and must also mention—(a) the name of the landlord or his common agent in case where the landlord actually refused or it might reasonably be believed that he would refuse to accept rent or to grant receipt; (b) the names of the sharers or so many of them as the tenant could specify in case where rent was payable to co-sharers jointly; (c) the name of the person to whom rent was paid on the last occasion and of the persons claimed it, in case of doubt as to who was entitled to rent. The application must be signed and verified by the applicant or by some person cognizant of the facts of the case according to the provisions of the Civil Procedure Code. The application must also be accompanied by the prescribed fee for transmission of the money to the landlord.

62. Receipt granted by Court deposited to be a valid acquittance.—(1) If it appears to the Court to which an application is made under section 61 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of section 61 by the person specified in the application as the person to whose credit the deposit was to be entered; in case (c) of that section, by the co-sharers to whom the rent is due; and in case (d) of that section, by the person entitled to the rent.

63. Procedure for payment to the landlord of rent deposited.—The Court receiving a deposit—

(i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent;

(ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village-office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it has reason to believe claims, or in entitled to the deposit.

64. Payment of refund of deposit.—(1) The Court may pay the amount of the deposit notified under section 63 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under clause (i) of section 63 or under sub-section (1) of section 64 before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(3) No suit or other proceeding shall be instituted against the Crown or against any officer of the Crown, in respect of anything done by a Court receiving a deposit under section 62 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Penalty for refusing to receive rent.

64A. Penalty for refusing to receive rent tendered by postal money-order or deposited.—If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty five per cent on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited, or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

Arrears of rent

65. Liability to sale for arrears in case of permanent tenure, holding a fixed rates or occupancy-holding.—Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates, an occupancy-raiyat, a non-occupancy raiyat or an under-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Note.—This section was amended by the Act of 1949. It provided the remedy for the landlord to recover arrears of rent from all classes of tenants. They were not liable to be ejected for arrears of rent but their tenures or holdings were liable to sale. It also created a first charge upon the tenure or holding for its rent and put the landlord in the position of a first mortgagee so far as the rent was concerned.[1]

1. Tarini v. Narain (1889) I. L. R. 17 Cal. 301.

"Rent shall be a first charge on the tenure or holding."— Whenever a tenure or holding was sold otherwise than in execution of a decree for arrears of rent, it was sold subject to the lien of the landlord on it for any rent due at the time of sale. The landlord was, therefore, in the position of a first mortgagee as far as the rent was concerned. So, where a tenure was sold in execution of a money decree or a mortgage decree, the purchaser took it subject to the liability for the rent which accrued due in respect thereof at the time of its purchase. But the case was different when the tenure or holding was sold in execution of a decree for its own arrears of rent, for, in this case it passed to the purchaser free from all liability for previous arrears.[1] But where a tenure or holding was sold in execution of a decree for rent saddled with liability for previous arrears, the purchaser was liable for such arrears.[2]

It was only the arrears of rent that were charged by section 65 upon the tenure or holding, and it was only such arrears that could be realised in execution by the sale of the tenure or holding.[3] The right to bring the tenure or holding to sale under section 65 existed only so long as the relationship of landlord and tenant subsisted.[4] The sale of a tenure or holding was possible so long as the rent was the first charge thereon. But the rent remained a first charge only so long as the relation of landlord and tenant subsisted. So if the landlord ceased to be a landlord at any time before the sale, he might execute his decree as a money decree under the Civil Procedure Code, 1908 but not as a rent decree under section 65 of the Act.[5] This conclusion was arrived at by gradual stages.[6]

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1. Mathura v. Nabin (1916) 20 C. W. N. 749.
2. Haradhan v. Kartik (1902) 6 C. W. N. 877.
3. Jitendranath v. Manomohan (1930) I. L. R. 58 Cal. 301 at 309 P. C.
4. Forbes v. Maharaj Bahadur (1914) I. L. R. 41 Cal. 926 at 939 P. C; Krishnapada v. Manada Sundari (1932) 36 C. W. N. 518 S. B.; Saralabala v. Subodh (1952) 4 D. L. R. 118.
5. Forbes v. Maharaj Bahadur, supra.
6. For the history of judicial decisions, see author's The Bengal Raiyats, Ch. 7, Sec. 1 (10).

Difference between rent-decree and money-decree.—A decree for payment of any debt to the plaintiff is called a money-decree in the Civil Procedure Code, 1508. A sale of the judgement-debtor's property in execution of such a decree entitles the purchaser only to the right, title and interest of the judgement-debtor in the property sold.[1] That is to say, the ordinary rule of caveat emptor applies. The purchaser takes the property with all the risks and defects in the judgement-debtor's title. That remedy being inadequate for the decree-holder landlord, the Bengal Tenancy Act, 1885 created a statutory charge for arrears of rent in section 65 in the case of tenants specified therein. According to that section a sale of a holding in execution of a rent-decree passed the holding itself to the purchaser and not merely the right, title and interest of the judgement-debtor tenant. If a landlord wanted the benefit of these special provisions he had to follow strictly the provisions laid down in the Act.[2]

To create the right to the benefits of a rent-decree it was necessary to comply with the following conditions; if any of them were not observed, the decree would only operate as a money-decree and only the interest of the tenant would pass at a Court auction. Firstly, the decree had to be one for the recovery of rent within the meaning of section 3(13) of the Act. Secondly, the plaintiff must hold the position of the land-lord to the defendant from the date of the institution of the suit up to the date of sale.[3] If a landlord obtained a decree for arrears of rent for a period before he parted with his interest, the decree could only be executed as a money-decree.[4] Similarly a decree obtained by a landlord against persons who had ceased to be his tenants could not be called a rent-decree.[5] It was necessary that the defendant should be a tenant at the date of the decree and not merely at the date of the institution of the

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1. Umesh v. Gour (1906) 10 C. W. N. 1042.
2. Raja Banabehari v. Ketterpal (1911) 16 c. W. N. 259 at 262.
3. Krishnapada v. Manada Sundari (1932) 36 C. W. N. 518 S. B.
4. Ibid.
5. Jitendra v. Manmohan (1930) 34 C. W. N. 821 at 838.

suit.[1] A decree obtained by ignoring the transferee of an occupancy holding was not a rent-decree.[2] Thirdly, it was necessary that the decree was passed in a suit instituted by the proper party i.e., either by the sole land-lord or the entire body of co-sharer landlords or by one or more co-sharers according to the procedure laid down in section 148A of the Act. Fourthly, the decree must have been obtained against proper parties; it should have been brought either (a) against the sole tenant or (b) against the entire body of co-tenant or (c) one or more co-tenants, who had been permitted by other co-tenants to represent them in their transactions with the landlord.[3]

Before the Amending Act of 1928, a decree obtained for arrears of rent in respect of more than one tenancy was not a decree for rent,[4] it could be executed not as a rent-decree, but only as a money-decree under the Civil Procedure Code.[5] Under section 144(2) inserted by the Amending Act of 1928, a landlord could institute one suit in respect of several tenancies under certain conditions but separate decrees had to be passed in respect of each tenancy and the decree had to be separately executed.[6]

66. Ejectment for arrears in other cases.—(1) Any suit or proceeding for the ejectment of a non-occupancy-raiyat or an under-raiyat from his holding on the ground that he has failed to pay an arrear of rent which is pending before any Court on the eleventh day of July, 1949, shall be deemed to be dismissed or dropped :

Provided that, on the application of the landlord made in this behalf, within eight months from the said date, any such pending suit or proceeding may be proceeded with as if such

1. Official Trustee v. Purna (1930) 34 C. W. N. 702 at 706.
2. Maharaj Bahadur v. Nari Mollani (1936) 40 C. W. N. 683.
3. Sec. 146A.
4. Bipradas v. Rajaram (1909) 13 C. W. N. 650.
5. Rash Mohini v. Debendra (1911) 16 C. W. N. 395; Mulluk v. Satis (1909) 14 C. W. N. 335; Hridoynath v. Krishna (1907) I. L. R. 34 Cal. 298.
6. Sarat v. Dharmadas (1937) 42 C. W. N. 375 at 377.

suit or proceeding were instituted or started for the recovery of an arrear of rent due in respect of such holding.

(2) If any decree or order for the ejectment of a non-occupancy-raiyat or an under-raiyat from his holding was passed before the eleventh day of July, 1949, by any Court on the ground of non-payment of an arrear of rent, but the possession of such holding has not been recovered in the execution of such decree or order, such decree or order shall be deemed to be null and void :

Provided that, on the application of the landlord made in this behalf, within eight months from the said date, to the Court which passed the decree or order or in which any proceeding in execution of such decree or order is pending, as the case may be, the Court may direct the execution of such decree or order as if it were a decree or order for an arrear of rent and in giving such derection the Court may, if necessary, determine the amount of the arrear rent and of the interest, if any, due under such decree or order.

(3) (a) If any non-occupancy-raiyat or under-raiyat has been ejected from his holding between the 5th day of March, 1949, and the eleventh day of July, 1949, in execution of a decree or an order for ejectment passed on the ground of non-payment of an arrear of rent, such raiyat or under-raiyat may, within eight months from the eleventh day of July, 1949, apply to the Court which passed the decree for restoration of such holding to him.

(b) On receipt of an application clause (a), if the Court, after taking such evidence and making such inquiries as it thinks fit, and after giving the landlord an opportunity of being heard, is satisfied that the applicant was so ejected between such dates and if the applicant deposits with the Court, within such reasonable time as the Court may fix, the amount of the arrear or rent and of the interest (if any) determined by the Court as lawfully due and the costs of the suit for payment to the landlord the Court shall make the order applied for and if the Court is not so

satisfied or if the applicant does not deposit such arrear, interest (if any) and costs within such time, the Court shall by an order in writing reject the application.

(c) An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under clause (b).

(d) An order passed by the Court under clause (b) for restoring any holding shall take effect from such date not being later than the first day of the agricultural year next following the date of the order as it may fix.

(e) If the person in possession of such holding does not give up its possession to the applicant with effect from such date, the Court shall on the application of such applicant eject such person and place such applicant in possession of such holding.

(f) Nothing in this sub-section shall apply where such non-occupancy-raiyat was admitted to the occupation of such holding under a registered lease or such under-raiyat held such holding under a written lease and the term of such lease has expired.

(g) (i) An application under clause (a) shall state the area and the specifications of the holding to which the application relates, the name and address of the landlord, the terms under which the holding was held by the applicant and the grounds on which the application is made and shall be accompanied by a certified copy of the decree or order for ejectment.

(ii) An appeal under clause (c) shall state the grounds on which the appeal is made and be accompanied by a certified copy of the order appealed against.

67. Interest on arrears.—An arrear of rent shall bear simple interest at the rate of six and a quarter per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier.

68. Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.—(1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twelve and a half per centum on the amount of rent decreed, as it thinks fit.

Provided that interest shall not be decreed when damages are awarded under this section :

Provided also that where damages are awarded —

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twelve and a half per centum on the whole amount claimed by the plaintiff, as it thinks fit.

69—71. Repealed by the Act of 1928.

Liability for rent on change of landlord or after transfer of tenure or holding.

72. Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer. —(1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Note.—This section was intended for the protection of the tenants. It dealt with the liability of the tenant for rent after his landlord transferred his interest.

Sub-section (1) provided that if the landlord transferred his interest to another person and yet received the rent which became due after the transfer, the tenant would not be liable for such rent unless the transferee gave, before the payment, notice of the transfer to the tenant. But if the tenant, after receiving notice of the transfer, choose to pay his rent to the former landlord, he could do so at his own risk and could not plead such payment in answer to a suit for rent by the new landlord.[1] The conditions which exonerated the tenant from liability to the transferee under this section were that the tenant paid to the former landlord and without notice of the transfer. The tenant was not required to prove that he made the payment in good faith.[2]

The object of sub-section (2) was to relieve the transferee landlord from the necessity of giving notice to each tenant individually. When there were number of tenants and it was difficult for him to give them notice individually, he could adopt the procedure prescribed by law. A general notice was held to be a sufficient notice.[3].

73. Liability for rent before transfer of occupancy-holding.—When an occupancy-raiyat transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer :

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

Note.—While section 72 dealt with the tenant's liability for rent in the case of transfer of the landlord's interest, section

1. Azim v. Ramlal (1897) I. L. R. 25 Cal. 324 at 330.
2. Jahru v. Sridam (1917) C. L. J. 204 at 205.
3. Nabin v. Surendra (1902) 7 C. W. N. 454 at 456 : Midnapore Zemindary v. Syama (1918) 23 C. W. N. 355 at 357.

73 dealt with the case of transfer of the interest of an occupancy-raiyat. For rent accruing before the transfer of an occupancy-holders, the landlord had his remedy both against the transferor and transferee jointly and severally; but the transferor would not be liable for the arrears before the transfer if the transferee agreed to pay the same and the fact was mentioned in the instrument of transfer.

Illegal cesses, etc.

74. Abwab, etc. illegal.—(1) All impositions upon tenants under the denomination of abwab, mathat or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

(2) All impositions upon tenants of road cess or public works cess, or of both, —

(a) in excess of the net amount fixed by clause (2) of section 41 of the Cess act, 1880, or

(b) on any scale in excess of that required by clause (3) of that section,

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void :

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919 :

Provided also that, subject to the provisions of section 72 of the Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

(3) Nothing in this section shall be deemed to affect the terms of a permanent mukarrari lease granted by a proprietor or holder of a permanent tenure in a permanently settled area and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928.

Note.—This section declared that all impositions upon tenants over and above the actual rent payable by them, were illegal and all stipulations for the payment of such impositions were void. The penalty for any such exaction was provided in section 75.

History of abwab.[1]—'Abwab' is the plural of bab, a head, an item and means items or miscellaneous items i.e., taxation. When the Moghul authorities desired to levy an additional sum, the usual way of accomplishing this object was not by increasing the tumar or original amount of revenue payable by the zemindar or farmer, but by imposing a tax for some particular purpose which was levied in a fixed proportion to the original jama or revenue. The purposes or pretexts for which these miscellaneous taxes or abwabs were imposed were numerous. The zemindars in their turn levied from the raiyats all the abwabs that they themselves had to pay, generally contriving to make a profit out of the transaction : and they further imposed additional abwabs of their own devising and for their own benefit.[2]

The first legislative measure, intended to protect the raiyats from these miscellaneous impositions, was made in Regulation VIII of 1793. The zemindars and other proprietors, being themselves exempted by the Permanent Settlement from the payment of any new abwabs or cesses to Government, were directed by this Regulation to revise in concert with the raiyats the former cesses levied upon the latter, and to consolidate the whole rent with the asal (the original rent) into one specific sum, after which they were strictly forbidden to impose any new abwabs upon the raiyats under any pretence whatever, on pain of the penalty laid down.

The effect of this provision was that an abwab payable at the time of the Permanent Settlement could not be recovered unless consolidated with the rent under section 54 of the Regulation. But if consolidated with the customary rent, it

1. For detailed study, see author's The Bengal Raiyats, Ch. 5, Sec.3.
2. C. D. Field, Introduction to the Bengal Code, p.76 f. n. : C. D. Field, Landholding, p. 445 f. n. 6.

would thenceforth be payable as the rent of the land. Regulation VIII was followed by Regulation V of 1812, which declared all stipulations for the payment of arbitrary and indefinite cesses to be null and void. The Rent Acts of 1859 and 1869 contained similar provisions and also provided for the payment of damages for contravention of those provisions.

The Bengal Tenancy Act, 1885 repealed all those provisions; it declared the abwabs, mathats, etc., illegal and any stipulation for its payment void. It further provided in section 75 that in case of exaction by a landlord of any sum in excess of the rent or interest lawfully payable, the tenant could sue him for recovery of the same together with a penalty not exceeding Rs.200. Under section 74A the imposition was not only illegal, but the landlord or his agent was liable to fine for such realization.

What was or was not an abwab.[1]—The question whether any particular item was or was not an abwab was a question of fact to be decided in each particular case.[2] If the particular sum specified in the lease or agreed to be paid was the lawful consideration for the use and occupation of the land, that is to say, if it was a part of the rent, although not described as such, the landlord would be entitled to recover the same, and the whole question in any case was whether the items claimed were really part of the rent, which was the consideration for the letting out of the lands.[3] This again depended upon the construction of the contract before the Court. If upon a fair interpretation of the terms of the contract the sum claimed could be deemed part of the actual rent, the tenant was bound to pay it ; if on the other hand, the sum claimed could only be

1. For detailed study, see author's The Bengal Raiyats, Ch.5, Sec.3.
2. Pudmanund v. Baijnath (1888) I. L. R. 15 Cal. 828; Radha v. Golak (1904) I. L. R. 31 Cal. 834 at 836 : Rani Chattra Kumari v. W. W. Broucke (1927) 32 C. W. N. 260 at 263 P. C : Abdul Gani v. Angri A. I. R. 1930 Cal. 205.
3. Kumar v. Eastern Mortgage Agency (1913) 18 C. L. J. 83.

regarded as an imposition in addition to the actual rent, the stipulation for its payment was void.[1]

74A. Fine for realisation of abwab, etc.—(1) If a landlord or his agent realises from a tenant any imposition declared under sub-section (1) of Section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, mutatis mutandis and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75.

Note.—This section, inserted by the Amending Act of 1938, made the realisation of abwab an offence and punishable with fine, independently of the civil remedy. The civil remedy in respect of an illegal exaction by the landlord was provided in section 75, which contemplated a suit by the tenant against the landlord for recovery of the amount realised with an additional sum by way of penalty. Sub-section (1) speaks of "landlord or agent." but both of them would be fined if they were found to be guilty of realising an illegal imposition. But if the landlord could prove that the agent realised the amount on his own responsibility, without any authority from the landlord, he could be exempted from liability.[2]

75. Penalty for exaction by landlord from tenant of sum in excess of the rent payable.—Every tenant from whom, except under any special enactment for the time being in force, any

1. Radha v. Golak (1904) I. L. R. 31 Cal. 834 at 837; Mathura v. Tota (1912) 16 C. L. J. 296; Upendra v. Meheraj (1916) 21 C. W. N. 108; Bejoy v. Krishna (1917) 21 C. W. N. 959 : K. C. Dey v. Hira Bewa A. I. R. 1937 Cal. 51.
2. Manasha v. Jalkadar (1942) 46 C. W. N. 887.

sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent or road cess or public works cess or interest lawfully payable may, subject to the second proviso to sub-section (2) of section 74 within six months from the date of the exaction, institute a suit to recover from the landlord in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Suspension of provisions relating to enhancement of rent.

75A. Suspension of provisions relating to enhancement of rent.—(1) All the provisions of this Act relating to enhancement of rent are hereby suspended for a period of ten years with effect from the twenty-seventh day of August, 1937 and all such provisions relating to enhancement of rent of a raiyat or an under-raiyat are hereby suspended for a further period of five years with effect from the twenty-seventh day of August, 1947.

(2) (a) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August, 1937 and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1928, are hereby declared to be inoperative from the date of such decree or order until the expiry of the ten years referred to in sub-section (1) and all decrees and orders enhancing the rent of a raiyat or an under-raiyat so passed are hereby declared to be inoperative for a further period of five years from the twenty-seventh day of August, 1947.

(b) Any provision providing for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in sub-section (1) is hereby declared to be inoperative during the said period and any provision providing for enhancement of rent of a raiyat or an under-raiyat contained in any such contract or in any contract entered into between a landlord and a

raiyat or an under-raiyat during the period of five years with effect from the twenty-seventh day of August, 1947, is hereby declared to be inoperative during the said period of five years.

(3) Notwithstanding anything contained in this Act or any other law, the period during which a decree, order or contract is rendered inoperative under this section shall not be taken into account in computing any period under the law of limitation nor in construing the terms of a contract.

Note.—This section was inserted by the Amending Act of 1938. By sub-section (1) all the provisions of the Bengal Tenancy Act, relating to enhancement of rent either by suit or contract were suspended for a period of ten years from the 27th August, 1937. This period was again extended by the Amending Act of 1947 for a further period of 5 years from the 27th August, 1947. Consequently there was no enhancement of rent either by suit or by contract during the period from 27th August, 1937 till the 26th August, 1952.

Clause (a) of sub-section (2) provided that all decrees and orders for enhancement of rent passed on or after the 27th August, 1937 would remain inoperative during the said period of 15 years. Clause (b) provided that all contracts for enhancement of rent entered into during the said period of 15 years would likewise remain inoperative during the said period. The section did not, however, prohibit the making of any contract for enhancement of rent during the period in question. It simply said that such contracts entered into during the period of 15 years from the 27th August, 1937 could not be enforced till after the termination of the period. But the decrees and orders for enhancement passed and the contracts for enhancement entered into before the 27th August, 1937 were not affected by the provisions of section 75A.

Sub-section (3) provided that in computing any period of limitation and in construing the terms of a contract, the said period of 15 years should not be taken into account.

CHAPTER —IX

Miscellaneous provisions as to landlords and tenants.

[While Chapter VIII dealt with a variety of provisions in respect of rent, Chapter IX contained miscellaneous other provisions relating to the rights and liabilities of landlord and tenant. Sections 76-83 related to improvements made on the holding and were applicable to the landlord and tenant. Section 84 authorised the landlord to acquire the holding for religious, educational and charitable purposes. Sections 85A and 86 dealt with surrender of the tenure or holding. Section 86A referred to the rights of the tenant in cases of diluvion and reformation in situ. Section 87 related to abandonment of the holding by a raiyat or an under-raiyat. Section 88 authorised sub-division of a tenancy or distribution of its rent under certain conditions. Section 89 was a general provision relating to ejectment; it provided that there was no ejectment except in execution of a decree of the Court. Sections 90-92 dealt with the rights of the landlord to measure the lands of the tenancy. Sections 93-100 provided for the appointment of common managers or common agents for co-sharer landlords.]

Improvement

76. Definition of "Improvement"—(1) For the purposes of this Act, the term "improvement," used with reference to a holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for drinking or for the use of men and cattle employed in agriculture ;

Explanation.—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or reconstruction of any of the foregoing works; or alterations therein or additions thereto; and

(f) the erection of a dwelling house whether of masonry bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices.

(3) But no work executed by the tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

Note. Sub-section (1) of section 76 defined "improvement" to mean any work which added to the value of the holding which was suitable to the holding and consistent with the purpose for which it was let.

Sub-section (2) set forth a number of works which were to be presumed to be improvements within the meaning of the section until the contrary was shown, subject, however, to the exception that no work executed by the tenant of a holding should be deemed to be an improvement for the purpose of this Act if it substantially diminished the value of his landlord's property.

77. Right to make improvements in case of holding at fixed rates and occupancy holding.—(1) Neither the tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the tenant and his landlord wish to make the same improvement the tenant shall have the prior right to make it, unless it affects another holding, or other holdings under the same landlord.

(3) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an abwab and the provisions of sub-section (1) of section 74 shall apply thereto.

Note.—This section was amended by the Act of 1928. In sub-section (1) the words "where a raiyat holds at a fixed rates or has an occupancy right in his holding" were omitted. The word 'tenant' was substituted for the word 'raiyat' wherever it occurred in the section and sub-section (3) was added.

As a result of the amendment, all classes of tenants were entitled to make improvements. A separate provision for a non-occupancy raiyat was not necessary. Hence section 79 was repealed by the same Act. But inadvertently, the marginal note of section 77 had escaped amendment.

Under sub-section (1) both the landlord and the tenant had the right to make improvements on land. Neither of them could prevent the other from making an improvement of the holding except on the ground that either of them was willing to make it himself.

Sub-section (2) provided that when both the tenant and the landlord wished to make the same improvement the tenant had the prior claim to make it, unless it affected another holding or other holdings under the same landlord.

Sub-section (3) penalised the landlord for realising any fee from the tenant for permission to make any improvement in respect of his holding; for the tenants had the statutory right to effect an improvement under sub-section (1). Such fee was declared to be an abwab within the meaning of section 74 (1), so that a landlord realising such fee was liable to the penalties prescribed by sections 74A and 75. Such fee could not be realised even from the grantee of a permanent mukarrari lease.[1]

1. Sec. 179, Proviso.

78. Collector to decide question as to right to make improvement, etc.—If a question arises between the raiyat or under-raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, the Collector may, on the application of either party, decide the question and his decision shall be final.

Note.—This section gave to the landlord and the tenant a right to get a decision from the Collector, on an application as to whether the landlord or the tenant had the right to make an improvement or whether a particular work was an improvement. The decision of the Collector was final. In a subsequent proceeding or suit before the Civil Court, the Court must accept the Collector's decision as binding, so far as these two questions were concerned.

79. Repealed by the Act of 1928.

80. Registration of landlord's improvements.—(1) A landlord may, by application to such Revenue-officer as the Provincial Government may appoint, register any improvement which he has lawfully made or which has been lawfully made wholly or partly at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Provincial Government from time to time prescribes.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

81. Application to record evidence as to improvement.—(1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

Note.—Section 80 provided the procedure for registration upon improvement by the landlord. The right was not available to the tenant. It was useful to the landlord for the purpose of obtaining an enhancement of the rent of an occupancy-raiyat under section 33(1) (a).

Section 81 gave a remedy which was available both to the landlord and the tenant. Either of them could, by application to a Revenue-officer, get evidence of an improvement recorded and use such record in any subsequent proceeding between the parties or persons claiming through them.

82. Compensation for raiyat's improvements.—(1) Every raiyat or under-raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor-in-interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat or under-raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat or under-raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat or under-raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat or under-raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat or under-raiyat between the second day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The Provincial Government may, from time to time, by notification in the Official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Provincial Government thinks fit, and determining the qualifications of those assessors, and the mode of selecting them.

83. Principle on which compensation is to be estimated.–

(1) In estimating the compensation to be awarded under section 82 for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat or under-raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrgiated land, to the length of time during which the raiyat or under-raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the lanlord and raiyat or under-raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Note.—Section 82 declared the right of a raiyat or an under-raiyat, who was ejected under sections 25, 44, 44C or 66, to get compensation for improvements made by him or his predecessor-in-interest. Whenever the Court passed any

decree for ejectment under any of the provisions referred to, it was obligatory upon the Court to determine the amount of compensation and make the decree for ejectment conditional on payment of the amount to the defendant. The right of the tenant to get compensation under this section could not be taken away by any contract by reason of section 178 (1) (d). But sub-section (3) laid down an exception that the tenant might forego the right to get compensation if he made the improvement in pursuance of a contract by which he obtained a substantial advantage in lieu of the statutory compensation.

Section 83 laid down the facts and circumstances which would guide the Court in estimating the compensation to be awarded under section 82.

Acquisition of land for building and other purposes.

84. Acquisition of land for building and other purposes.— A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

85. Repealed by the Act of 1928.

Surrender and abandonment.

85A. Surrender by tenure-holders.—(1) A tenure-holder may apply to the Court for permission to surrender a tenure.

(2) An application under sub-section (1) shall be in the prescribed form, shall give particulars, inter alia, of under-tenure-holders and raiyats, if any, holding directly under the tenure sought to be surrendered, and of any incumbrances

upon the said tenure, and shall be accompanied by the process fee prescribed for service of notices upon the landlord or his common agent, if any, under-tenure-holders and raiyats, if any, referred to above and incumbrancers, if any.

(3) If the Court, after hearing the parties, grants permission for the surrender of the tenure, it shall impose such equitable conditions as it may think proper.

(4) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

Note.—This section was inserted by the Act of 1938. Before the amendment a tenure-holder had no right to surrender his tenure; only a raiyat had that right.

This section laid down the law on the point. The surrender of a tenure could not be effected except through the Court under this section. A tenure-holder desiring to surrender his tenure had to make an application to the Court for permission to surrender the tenure and such an application had to be made in the prescribed form accompanied by the prescribed process fee for service of notices. It was required to mention the particulars required by sub-section (2), namely, the under-tenure-holders and the raiyats, if any, holding directly under the tenure as well as the incumbrances, if any, upon the tenure. Subordinate interests, if any, held mediately under the tenure were not required to be mentioned. Notice of application had to be given to the landlord or his common agent, tenure-holders and raiyats holding directly under the tenure and also to the incumbrancers, if any. The object of giving notice was to invite objections, if any, from them. The Court then heard the parties, and granted, if it thought fit, the permission for the surrender. In granting the permission, the Court might impose on the applicant, such equitable conditions as it thought proper. An appeal would lie from the order of the Court to the ordinary Civil Appellate Court. Only one appeal, however, lay in such cases.

86. Surrender.—(1) A raiyat or under-raiyat not bound by lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat or under-raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat or under-raiyat has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given namely :—

(a) if the raiyat or under-raiyat takes a new holding to the same village from the same landlord during the agricultural year next following the surrender ;

(b) if the raiyat or under-raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat or under-raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situated.

(5) When a raiyat or under-raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, or when there is an under-raiyat on the holding or part thereof the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer or the under-raiyat, as the case may be.

(7) Save as provided in sub-section (6) nothing in this section shall affect any arrangement by which a raiyat or under-raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Note.—This section was amended by Act of 1938 by the insertion of the words "or under-raiyat" after the word "raiyat" in all places in which it occurred in the section.

Sub-section (1) enabled a raiyat or an under-raiyat, subject to certain conditions, to relinquish his holding. The

right was given to them except those who were bound by leases for a fixed period. Surrender could only be made at the end of the agricultural year and was effected without the consent of the landlord of by mutual agreement between the parties in any manner which was not detrimental to the interest of the persons protected by sub-section (6). The right to surrender could not be taken away by contract.[1]

Sub-section (2) required that a raiyat or an under-raiyat should give the landlord three months-notice of his intention to surrender. As surrender was possible only at the end of the agricultural year, it necessarily follows that the notice had to be given within the first nine months of such year. It was not necessary that the notice should be in writing and the tenant had the option of causing the notice to be served through the Civil Court within whose jurisdiction the raiyati land was situate. If the tenant failed to notify his intention to surrender at least three months before he actually surrendered, he was liable for the rent of the holding for the agricultural year next following the date of his surrender.

The heirs of a tenant, dying intestate were also liable to pay rent, whether they occupied the land or not.[2]

Sub-section (3) laid down certain presumptions with respect to notice in favour of the tenant. If he took settlement of fresh lands in the village from the same landlord during the agricultural year next following the surrender, the Court presumed until the contrary was shown, that notice was given. A similar presumption was drawn from the tenant ceasing to reside in the village for at least three months before the end of the agricultural year in which the surrender was made. Apart from these presumptions, the fact that the landlord let the land to another person, would be evidence of knowledge on the part of the landlord of the tenant's intention to surrender.

Sub-section (5) said that when a tenant surrendered his holding the landlord could enter on the holding. He could

1. Sec. 178 (3)(c).
2. Peary v. Kumaris (1892) I. L. R. 19 Cal.790 at 793.

either let it to another tenant or take it into his own cultivation.

Sub-section (6) was enacted to guard against collusive surrenders in fraud of the rights of third parties. It was provided that when the holding was subject to an incumbrance secured by a registered instrument or when there was an under-raiyat on the holding, the surrender was not valid unless it was made with the consent of the landlord and the incumbrancer or the under-raiyat, as the case might be.

By the Amending Act of 1928, an under-raiyat was included in section 86 (6) to remove doubts as to whether he was entitled to protection against collusive surrenders. Before the amendment an under-raiyat was only protected if he held under a registered instrument.[1] After the amendment it was clear that he would be protected, even if his interest was not secured by the registered instrument.

Sub-section (7) provided that by arrangement with the landlord, even a portion of the tenancy could be surrendered.

86A. Abatement of rent on account of diluvion and re-entry into lands which reappear.—(1) If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.

(2) (a) Notwithstanding anything contained in this Act or any other law or any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years and the tenant or his successors-in-interest shall have right to immediate possession on the reappearance of such lands or portion thereof within twenty years of the loss by the diluvion, and the landlord shall have right to the arrears of rent without interest or damage in respect

1. Nilkanta v. Ghantoo (1900) 4 C. W. N. 667.

of the land which has reappeared for the period during which it was lost or for four years whichever is less.

(b) The rent of the lands which have reappeared, shall for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act) be calculated on the rent of the remainder of the tenancy existing when possession of the lost lands is resumed, and shall bear the portion to that rent which the area of the lands which have reappeared bears to that of the remainder of the tenancy :

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappears shall be calculated in like manner on the rent existing when the entire tenancy was lost.

(3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto.

Note.—Section 86A was first introduced by the Act of 1928. That section was substituted by the present section by the Act of 1938. By this amendment diluvion was a ground for abatement of rent and all classes of tenants were given that right for lands lost by diluvion. Tenants were also given the right to get immediate possession of the diluvated lands on re-appearance within 20 years subject to the landlord's right to get arrears of rent for the period of sub-mergence or for 4 years whichever was less.

Sub-section (1) is analogous to clause (b) of sub-section (1) of section 52 of the Bengal Tenancy Act and dealt with the question of abatement of rent of a tenure or holding on account of diluvion. It provided that if the lands of a tenure or holding were wholly or partly lost by diluvion, the rent should be abated wholly or in part, as the case might be. The abatement would be proportionate to the area lost out of the total area of the tenure or holding. In other words, the amount of abatement would bear the same proportion to the rent of the whole tenancy.

Sub-section 2(a) referred to reformation in situ and laid down that even if the tenant obtained an abatement of rent under sub-section (1) or by any other provisions of the Act, he was entitled to assert his tenancy right in the land if it reformed in situ within 20 years from the time when it was lost by diluvion, and to get immediate possession of the land so reformed; while the landlord had the right to get rent or 4 years or for the period during which the land remained under water if such period was less than 4 years.

Sub-section 2(b) and its proviso laid down the law relating to the assessment or calculation of the rent payable for the reformed lands. It provided that for the purpose of the payment of the arrears of rent under clause (a) and the rent due thereafter, the rent of the lands which re-appeared was to be calculated on the basis of the rule of proportion.

Sub-section (3) seems to deal with cases of reformation or re-appearance of diluvated land after 20 years from the date of inundation. Sub-section (2) dealt with the reformation or re-appearance of diluvated lands within 20 years from the date of inundation and did not say anything about reformation taking place beyond that period. This section seems to deal with such cases and in respect of them it virtually provided that they would be governed by the general law of the country as laid down in enactments like the Bengal Alluvion and Diluvion Regulation XI of 1825 and the Bengal Alluvion and Diluvion Act IX of 1847 B. C. and also in the case law, such as the rules laid down in Lopez v. Madan Mohan Thakur[1] and similar other cases.

87. Abandonment.—(1) If a raiyat or under-raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat or

1. (1870) 13 M.I. A. 467.

under-raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in the prescribed manner.

(3) When a landlord enters under this section, the raiyat or under-raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat or under-raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as the Court may seem just.

(4) Where the whole or part of a holding has been subject by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat or under-riyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat or under-raiyat. If the sub-lessee refuses or neglects within two months to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

(5) If an under-raiyat has—

(a) a right of occupancy in a holding or portion thereof, or

(b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or

(c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act,1928, or has a homestead thereon,

the landlord shall, before entering on the holding, under this section, offer the whole holding, or part thereof, to the under-raiyat at the rent paid by him to the raiyat and on condition of the under-raiyat paying up all arrears due from that raiyat and a salami of five times the aforesaid rent. If the under-raiyat refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (1) and (2).

Note.—The Act of 1928 inserted the words "or under-raiyat" after the word "raiyat" wherever it occurred in the section and the words "two month" in place of "a reasonable time.". It also added sub-section (5).

While section 86 conferred on a raiyat or an under-raiyat the right to surrender the holding, section 87 secured to the landlord the right of re-entering upon the land in case a raiyat or an under-raiyat abandoned his holding.

The Act neither defined abandonment nor gave an exhaustive description of the acts which constituted it. Sub-section (1) simply mentioned three conditions as guiding principles for the consideration of the question, namely, that the raiyat or under-raiyat (a) voluntarily abandoned his residence without notice to the landlord, (b) did not arrange for payment of his rent as it fell due, and (c) ceased to cultivate his holding either by himself or by some other person. The cultivation of land and the payment of rent were two of the common incidents of a raiyat tenancy, and when a raiyat did neither of them and without giving notice to the landlord departed from the land he occupied, that could be taken as evidence of his severing connection so as to justify the landlord to re-enter in the land. If these conditions were present, it was not necessary, to constitute abandonment, that the tenant must leave the village in which the holding was situate.[1] On the other hand the more fact that the heirs of the original tenant had left the village after the death of their father could not be deemed to have constituted abandonment.

1. Aminaddin v. Chandranath (1928) 48 C. L. J. 390.

Moreover, some time must elapse after their leaving the village, before it could definitely be held that they had abandoned the holding.[1] Mere non-payment of rent was not the evidence of abandonment but non-payment of rent coupled with non-occupation of land was evidence of an intention to surrender.[2]

Sub-section (2) prescribed that before a landlord entered upon the land on the ground of abandonment, he was obliged to file a notice in prescribed form in the Collector's office, stating that he had treated the holding as abandoned. Now the question is whether filing of the prescribed notice was a condition precedent to the validity of his re-entry. It was held[3] that it was not indispensible. A landlord was entitled to enter upon the land, which was in fact abandoned, without recourse to the provisions of section 87.[4] It was not the notice which terminated the tenancy but the voluntary abandonment by the raiyat or the under-raiyat, coupled with acts on the part of the landlord, indicating that he considered the tenancy at an end, and it was for the Court in each case to determine whether the tenancy had terminated.[5] The right of the landlord to recover possession of land relinquished by the tenant conferred upon him under the general law and did not depend exclusively upon section 87 of the Act.[6] As that section was not exhaustive, the landlord could proceed by suit, if he could prove that the facts and circumstances of the case led to the inference of abandonment.[7] A landlord who proceeded to take possession of a holding after service of notice under section 87 on the allegation that there was an

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1. Aswini v. Harkumar (1928) 32 C. W. N. 1111 to 1112.
2. Goher v. Alifuddin (1919) to C. L. J. 13 at 15.
3. Samujan v. Munshi (1900) 4 C. W. N. 493 : Ram v. Jawahir (1907) 12 C. W. N. 899; Priyanath v. Anath (1916) 371. C. 942.
4. Wabid v. Mahamed (1918) 47 I. C. 147 at 148.
5. Lal v. Arbullah (1896) I C. W. N. 198 at 200.
6. Golam v. Hanumandas (1934) I. L. R. 61 Cal. 937 at 942; Abdul v. Ali (1930) I. L. R. 58 Cal. 869 at 871; Baikuntha v. Chandra (1929) 33 C. W. N. 1023 at 1027.
7. Matookdhari v. Jugdip (1914) 19 C. W. N. 1319.

abandonment by the tenant, did so at his own risk. He could not be said to take possession in due course of law, so as to bar a suit by the tenant for recovery of possession under section 9 of the specific Relief Act, 1877.[1]

Sub-section (3) prescribed the limit within which the tenant could bring the suit for recovery of possession. The limitation varied in cases when the notice was served or when it was not served. If it was served the limitation was 6 months in case of non-occupancy raiyat and 2 years in other cases running from the date of the publication of notice. If it was not served, limitation for all classes of raiyats was 2 years from the date of dispossession by the landlord under Art. 3 of Sch.III of the Bengal Tenancy Act, as amended by the Acts of 1907 and 1908. In such a suit the Court had to be satisfied that the tenant had not voluntarily abandoned his holding. On being satisfied that the tenant had not voluntarily abandoned his holding, the Court might order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as the Court might seem just.

Sub-sections (4) and (5) wee enacted to protect the sub-lessee from collusion between the lessor and the superior landlord. Sub-section (4) enacted that even if a tenant had abandoned the holding, the landlord could not enter upon the land unless the holding was offered to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the tenant. The sub-lessee was required to pay up all arrears due to the landlord from his lessor. The continuance of the sub-lease was, therefore, dependent upon two conditions :—(a) that the sub-lessee agreed to pay the rent which the tenant, who abandoned the holding, had to pay; and (b) that he paid up all arrears due from that tenant. If the sub-lessee refused or neglected to accept the offer within 2 months from the date of the offer the landlord could avoid the sub-lessee enter on the holding and let it to another tenant or cultivate it himself. But

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1. Suresh v. Nesa (1910) 11 C. L. J. 433.

he was obliged to enter in accordance with law.[1] If he dispossessed him without the assistance of the law, he committed trespass.[2]

Sub-section (5) gave to an under-raiyat as specified in clauses (a), (b) and (c), a chance of having the status of a raiyat who abandoned his holding. These clauses speak of an occupancy under-raiyat or an under-raiyat admitted by his landlord to have a permanent and heritable right or an under-raiyat who had been in possession of his land for a continuous period of 12 years or who had a homestead thereon. Such an under-raiyat could only step into the raiyat's shoes (a) if he agreed to pay the same rent as he used to pay to the raiyat, (b) if he paid up all the arrears of rent due from the raiyat who had abandoned and (c) if he paid a further sum as salami, equivalent to five times his rent. He had to elect within 2 months whether he accepted the offer, failing which the landlord could enter upon the land.

Though sub-sections (4) and (5) were intended to protect, under certain conditions, an under-raiyat whose immediate landlord had abandoned his holding, there were important differences between the two sub-sections. Sub-section (4) applied to a sub-lease made by registered instrument.[3] sub-section (5) applied to all sub-leases of the classes mentioned therein. Under sub-section (4) the whole holding had to be offered to the sub-lessee for the remainder of the term, although he might be a sub-lessee of a part only of the holding; but under sub-section (5) the entire holding would be offered to the sub-lessee if he was in possession of the entire holding; otherwise the offer was restricted to the part in his possession. Under sub-section (4) the sub-lessee could hold only for the remainder of the term of his sub-lease, but sub-section (5) made no such restriction in point of time. Under sub-section (4) the sub-lessee had to pay the rent payable by his landlord; this virtually meant that his original rent was

1. Jumeer v. Goneye (1869) 12 W. R. 110 at 111.
2. Dumree v. Bissessur (1870) 13 W. R. 291.
3. Pran v. Mukta (1913) 18 C. L. J. 193 at 198.

reduced but under sub-section (5) the sub-lessee's original rent continued; over and above he had to pay a salami.

Distinction between surrender and abandonment.—Surrender and abandonment are the two circumstances under which a tenancy is determined and correspond to "express surrender" and "implied surrender" as provided in clauses (e) and (f) of section 111 of the Transfer of Property Act, 1882. The ordinary effect of surrender is to merge and pass the estate of the surrenderer to that of the surrenderee. Surrender immediately divests the estate of the surrenderer and vests it in the surrenderee, even without the assent of the latter. It is different from abandonment. The position of a landlord in the case of abandonment is stronger than that of surrender by a tenant. In the case of abandonment, the landlord does not acquire any title through the tenant as in the case of purchase. In the case of surrender, the tenant gives up the land to the landlord.[1] According to Woodroffe J., surrender differed from abandonment because the landlord taking the tenant's right should be bound in equity by the tenant's previous transactions such as a mortgage; that is to say, if a tenant cannot derogate from his own grant, no more can the landlord who assumes the tenant's right, though he may be entitled to assert his superior right as landlord otherwise than by accepting a surrender from his tenant.[2] In other words by surrender a tenant cannot confer upon the landlord a higher right than he can pass to any other person by assignment.

Sub-Division of Tenancy

88. Division of tenancy not valid unless consented to by all parties or ordered by Civil Court.—(1) Save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—

(a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and

1. Pran v. Mukta (1913) 18 C. L. J. 193 at 198.
2. Mohammad v. Sheikh (1914) 21 C. L. J. 185 at 186.

(b) all the co-sharer tenants;

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) The Civil Court, on application made to it by one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than one made under this sub-section or under an agreement made between all the landlords and co-sharer tenants in conformance with the provisions of sub-section (1), may, by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable, or annul or modify a division or distribution previously made other than one of the nature referred to above if the Court considers it unfair and inequitable :

Provided that—

(a) no such order shall be passed without notice to the landlord or the entire body of landlords or their common agent, if any and to the remaining co-sharer tenants, the prescribed process-fee for which shall accompany the application;

(b) no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings; and

(c) nothing contained in this sub-section shall be deemed to authorise a Court on an application for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section (3).

(3) On receipt of notice of an application for division or distribution under sub-section (2) a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.

(4) Every order of a Court under sub-section (2) directing division of a tenure or holding or a distribution of the rent thereof shall also direct payment to the landlord of one rupee as mutation fee by each applicant or each body of applicants including co-applicants, if any, joined under sub-section (3).

(5) Every order under sub-section (2) directing division of a tenure or holding or distribution of rent payable in respect thereof shall have the effect of ceasing the joint and several liability of each applicant or each body of applicants including co-applicants, if any, joined under sub-section (3) for rent including arrear of rent of all the lands of the entire tenure or holding.

(6) An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee.

Note.—This section was substituted by the Act of 1938. By means of this amendments, increased facilities were given for sub-division of tenancy or distribution of rent payable in respect thereof. The procedure for effecting division of tenancy or distribution of rent through Court was better clarified and made more definite. The right of appeal was also given against an order for the division of a tenancy or distribution of its rent. Sub-section (5) was substituted for the former sub-section (5) by the Act of 1954.

According to section 88 a tenant could divide his tenancy or distribute the rent payable in respect thereof by mutual consent of the parties or through the Court. Sub-section (1) speaks of express consent of the parties. A division of a tenancy between the tenants was binding on them inter se. It did not bind the landlords, unless they gave their express consent to such division. Similarly a division of a tenancy

without the consent of all the co-sharer tenants was invalid, though the kabuliat, by which the division was effected, included new land.[1] Again the consent required in sub-section (1) had to be in writing, it could not be proved except by writing or document itself.

The proviso to sub-section (1) referred to a particular event in which a landlord's consent to the division of a tenancy or the distribution of its rent was presumed and his express consent in writing was dispensed with, notwithstanding the provisions of sub-section (1). Thus it laid down that if there was an entry in the rent-roll of the landlord showing that a tenure or holding was divided or that its rent was distributed, it was presumed that the landlord gave his express consent in writing to such division or distribution with the result that his express consent in writing as required by sub-section (1) might be dispensed with.

Sub-section (2) laid down the procedure for the division of a tenancy or distribution of rent by means of judicial proceeding. When a division of a tenancy or distribution of rent could not be amicably effected by mutual agreement among the parties, one or more co-sharer tenants could, under this sub-section, file an application to the Court, asking for division of the tenure or holding or for distribution of the rent payable in respect thereof or for the annulment or modification of a previous division or distribution, provided such previous division or distribution was not effected by means of a judicial proceeding or by mutual agreement of all the parties concerned. A Civil Court could not re-open and annul or modify a previous division or distribution, if the same was effected by means of a judicial proceeding or by mutual agreement between the landlords and co-sharer tenants. This, however, did not mean that a fractional unit of a tenancy previously created, could not be further broken up by means of a judicial proceeding. Such a unit already created became an independent tenancy; further spliting up of the same could be made till the ultimate limit of rent or annulling

1. Mehendra v. Rajani A. I. R. 1939 Cal. 609.

or modifying a previous division or distribution of rent must be fair and equitable and in writing. An unfair or inequitable division or distribution might be set right by the Appellate Court on appeal.

The proviso to sub-section (2) laid down three rules for the guidance of the Court in making a division of a tenancy or a distribution of rent under sub-section (2). The rules were—(1) No order for division or distribution should be made without notice to the landlord or the entire body of landlords or their common agent, if any, and to the remaining co-sharer tenants. (2) The division or distribution should not be so made as to bring the rent for any portion below Rs.2 in the case of tenures or Re.1 in the case of holdings. (3) No division or distribution should be made in respect of the share of any tenant other than the applicant and the co-applicants, if any. These rules were mandatory and the disregard or violation of any of these rules would render the Court's order for division or distribution ultra vires and invalid.

Sub-section (3) dealt with the joinder of a co-sharer tenant (opposite party) as a co-applicant. It provided that when an application was filed to the Court by one or more co-sharer tenants for a division of a tenancy or for a distribution of rent under sub-section (2), joining the landlord or landlords and the remaining co-sharer tenants as opposite parties, any co-sharer might join with the applicant. It was the duty of the Court, on such application from any co-sharers, to transfer his name from the category of the opposite party to that of the applicant and join him as a co-applicant. No further notice on the landlord or landlords and the remaining co-sharer tenants had to be served upon such joinder.

Sub-section (4) required that when a division of a tenancy or distribution of rent was ordered by the Court, each applicant including co-applicants had to pay a fixed mutation fee of one rupee to the landlord irrespective of the value of the sub-divided tenancy.

Sub-section (5) speaks of the date from which the division of tenancy or the distribution of rent took effect. The liability

of each applicant for rent including arrears became several only from the date of the order.

Sub-section (6) gave a right of appeal to the aggrieved party from an order of the Court for a division of tenancy or distribution of rent. The appeal had to be filed within 30 days from the date of the order and must be accompanied by the prescribed fee. There was no second appeal from an order passed by the Appellate Court in appeal under this sub-section.

Questions relating to title are outside the scope of a case under this section. This section contemplates a case relating to division of a holding or distribution of its rent. So the decision in a case under this section cannot operate as resjudicata in a subsequent suit for partition between the parties.[1]

88A. Sub-division of holding where the Provincial Government is the sole landlord.—(1) Notwithstanding anything contained in section 88, where the Provincial Government is the sole landlord, the Revenue-officer, on application made to him by one or more co-sharer tenants for the division of a holding and for distribution of the rent payable in respect thereof, may, by order in writing, direct such division of the holding and distribution of rent thereof including arrears of rent, if any, as he considers fair and equitable :

Provided that —

(a) no such orders shall be passed unless reasonable notice has been given to the parties concerned to appear and be heard in the matter, and

(b) no order for the division of a holding and the distribution of the rent thereof shall be made which would result in bringing the rent of any portion to below rupee one.

(2) An appeal shall lie to the Collector from an order of the Revenue-officer under sub-section (1) provided it is presented

1. Maniruddin v. Forman (1965) 18 D. L. R. 538.

within thirty days from the date of such order and is accompanied by the prescribed fee.

Ejectment

89. No ejectment except in execution of decree. — No tenant shall be ejected from his tenure or holding except in execution of a decree.

Measurements

90. Landlord's right to measure land.—(1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorised by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely) :—

(a) where the area of the tenure or holding is liable by reason of alluvion or diluvion to vary from year to year, and the rent payable depends on the area;

(b) where the area under cultivation is liable to vary from year to year, and the rent payable depends on the area under cultivation;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

91. Power for Court to order tenant to attend and point out boundaries.—(1) Where a landlord desires to measure any land which he is entitled to measure under section 90, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord

at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

92. Standard of measurement.—(1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Provincial Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers

93. Power to call upon co-owners to show cause why they should not appoint a common manager.—(i) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof; or

(ii) when, owing to the existence of a large number of small co-sharers in an estate or tenure the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due, the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (i), —

(a) the Collector, or

(b) any one having an interest in the estate or tenure or in any of the estates or tenures; and

in case (ii),—

(a) more than half the tenants, or

(b) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (i), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures as the case may be, which are affected by the dispute, and

in case (ii), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment :

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands hold jointly between two or more estates or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

94. Power to order them to appoint a manager, if cause is not shown.—If the co-owners fail to show cause as aforesaid within one month after service of a notice under section 93, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

95. Power to appoint manager, if order is not obeyed.—If the co-owners do not, within such period, not being less than one month after the making of an order under section 94, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time, —

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

96. Power to nominate person to act in all cases under clause (b) of section 95.—The Provincial Government may nominate a person for any local area to manage all estates

and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of section 95 and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

97. The Court of Wards Act, 1879, applicable to management by Court of wards.—In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

98. Provisions applicable to manager.—(1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with an distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge and not otherwise.

99. Power to restore management to co-owners.—When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

99A. Appointment of common agent.—(1) Where two or more persons are joint or co-sharer landlords they may be an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to receive on behalf of all of them—

(a) notices of transfer under sections 12, 13, 15, 17, 18 and 26C of tenures or holdings or portions or shares thereof held under them within that property,

(b) . . (This clause was omitted by the Act of 1947),

(c) the rent deposited in Court under section 61, and

(d) the notices referred to in sub-section (2) of section 85A and in sub-section (2) of section 88.

(2). (a) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(b) The name and address of such common agent shall be entered upon the receipt required under section 67 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1).

100. Power to make rules.—(1) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99.

(2) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A.

Note.—Sections 93—99 authorised the District Judge to appoint, in certain circumstances and under certain conditions, a common manager for an estate or tenure having a large number of co-sharers or to direct management of the same by the Court of Wards if the latter consented. Section 99A provided that the co-sharer landlords themselves could, by an instrument in writing, appoint a common agent for certain purposes and have his name registered as such in the collectorate. Section 100 authorised the High Court to make rules regarding the powers and duties of common managers and the Board of Revenue to make similar rules regarding common agents.

CHAPTER —X

Record-of-Rights and Settlement of Rents.

Part I. — Record-of-Rights

[Part I dealt with preparation of record-of-rights. Section 101 empowered the Provincial Government to direct a survey to be made and a record-of-rights to be prepared. Section 102 contained the particulars to be recorded in the record-of-rights. Section 102A authorised the Government to direct a survey and preparation of record-of-rights, regarding the use or passage of water, in certain special circumstances. Section 103 authorised a Revenue-officer to record the particulars mentioned in Section 102, on the application of proprietors or tenants, without any order of the Government. Section 103A dealt with the preliminary publication, amendment and final publication of record-of-rights. Section 103B provided for a certificate of final publication and the presumption as to the correctness of entries in a finally published record-of-rights.]

101. Power to order survey and preparation of record-of-rights.—(1) The Provincial Government may, in any case if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in respect of all lands in any local area, estate or tenure or part thereof;

Provided that the provisions of sections 104 to 105A, 109C, 109D, 110, 112 and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

(2) In particular and without prejudice to the generally of the foregoing power, the Provincial Government may make such an order in the following cases, namely :—

(a) where—

(i) the landlord or tenants, or

(ii) a proportion of not less than one-half of the total number of landlords, or

(iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respec

tively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or

(iv) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, depositing or giving security for, such amount for the payment of expenses as the Provincial Government directs;

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(c) where the local area, estate or tenure or that part thereof belongs to, or is managed by, or on behalf of, the Crown, or is managed by the Court of Wards or a manager appointed by the District Judge under section 95 ;

(d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term "settlement of land-revenue," as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the Official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the Provincial Government.

102. Particulars to be recorded.—Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

(a) the name of each tenant or occupant;

(b) the class or classes to which each tenant belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non occupancy-raiyat or under-raiyat, with or without a right of occupancy and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;

(d) the name of each tenant's landlord;

(dd) the name of each proprietor in the local area or estate;

(e) the rent payable at the time the record-of-rights is being prepared;

(ee) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is gradually increasing amount, the time at which, and the increments by which, it increases;

(f) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;

(g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(gg) the rights and obligations of each tenant and landlord in respect of—

(i) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well, or any other source of supply, and

(ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;

(h) the special conditions and incidents, if any, of the tenancy;

(i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

(j) if the land is claimed to be held rent free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled under what authority;

Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact together with the prescribed particulars relating to the occupant, the landlord and the tenancy.

102A. Power to order survey and preparation of record-of-rights as to water.—The Provincial Government may, for the purpose of setting or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water, make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof in respect of—

(a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well, or any other source of supply; and

(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

103. Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of raiyats.—On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the raiyats of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with, rules made in this behalf by the Provincial Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

103A. Preliminary publication, amendment and final publication of record-of-rights.—(1) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the Provincial Government may make, and (if a settlement of land-revenue is being or is about to be made) the settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3), the Revenue-officer shall finally frame the record and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

103B. Certificate of, and presumption as to final publication and presumption as to correctness of record-of-rights.—(1) When a record-of-rights has been finally published under section 103A, the Revenue-officer shall, within such time as the Board of Revenue may, by general or special order require, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

(2) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate, tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3) The Provincial Government may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certificate copy thereof or extract therefrom, is produced, such record-of-rights, shall be presumed to have been finally published, unless such publication is expressly denied.

(5) Every entry in record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

Part II.

Settlement of rents, preparation of Settlement Rent-roll and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.

[This part dealt with an additional duty of the Revenue-officer in cases where record-of-rights were prepared under section 101(2)(d). In permanently settled districts, the Revenue-officer had to record the existing rents payable by the tenants, under section 102(c). But where land-revenue had to be settled, the rental assets of the estate had to be determined and for this purpose, the Revenue-officer had to settle a fair and equitable rent in respect of every land of which the occupant was not entitled to hold rent-free and to prepare a settlement rent-roll after publication of the draft record-of-rights.

Sections 104-104F provided for the preparation of the settlement rent-roll, its publication, disposal of objections thereto and its final revision and incorporation in the record-of-rights published in draft under section 103A. Section 104G provided for a right of appeal to a superior revenue authority against any order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104E. Section 104H provided an opportunity of coming to the Civil Court to any person aggrieved by an entry of rent settled under this Part. Unless such opportunity was availed of within the limited period of time, the entry became final under section 104J, and so suit would lie in the Civil Court in respect thereof.]

104. Settlement of rents and preparation of Settlement Rent-roll when to be undertaken by Revenue-officer.—In every case in which a settlement of land revenue is being, or about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (1),—

(a) settle fair and equitable rents for tenants of every class,

(b) notwithstanding anything contained in section 191, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (j) of section 102, that the occupant is not entitled to hold it without payment of rent, and

(c) prepare a Settlement Rent-roll;

Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government if it does not appear to the Provincial Government to be expedient that he should do so.

104A. Procedure for settlement of rents and preparation of Settlement Rent-roll under this Part.—(1) For the purposes of settling rents under this part and preparing a settlement rent-roll, the Revenue-officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say,–

(a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed opon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent:

(b) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the

amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;

(c) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents of the basis of such rates in the manner hereinafter described ;

(d) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 13A, sub-section (1), or by enhancing or reducing such rentals;

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

(2) The Settlement Rent-roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

104B. (1) Contents of Tables of Rates.—If a Table of Rates is prepared, it shall specify—

(a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent; and

(b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

(2) Local publication of Tables.—When the Revenue-officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

(3) Revenue-officer to deal with objections.—Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

(4) Tables to be submitted to superior Revenue authority.—If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceeding to the Revenue authority empowered by rule made by the Provincial Government to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

(5) Proceedings of confirming authority.—The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made or may return the case for further inquiry.

(6) Effect of Table.—When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act : and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

104C. Application of Table of Rates.—When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue-officer may settle all or any of the rents and prepare the Settlement Rent-roll on the basis of the rates

shown in the Table by calculating the rental of each tenure or each holding of a raiyat or under-raiyat on the area of such tenure or holding at the said rates :

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith.—In framing a Table of Rates under section 104B, and a settling rents under section 104C, the Revenue-officer shall be guided by such rules as the Provincial Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

104E. Preliminary publication and amendment of Settlement Rent-roll.—(1) When a Settlement Rent-roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the Provincial Government may make.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F ; revise any rent entered therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104F. Final revision of Settlement Rent-roll and incorporation of the same in the record-of-rights.—(1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

104G. Appeal to, and revision by, superior Revenue authorities.—(1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E; and such appeal shall lie to the prescribed superior Revenue authority.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H.

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104H. Jurisdiction of Civil Courts in matters relating to rent.—(1) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-

rights, or, if an appeal has been presented to a Revenue authority, under section 104G, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :—

(a) that the land is not liable to the payment of rent;

(b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;

(c) that the relation of landlord and tenant does not exist;

(d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;

(e) that the tenancy belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(f) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under that clause;

(g) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded;

(h) that any right of way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

No such suit shall be brought against the Crown unless the Crown is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable and, shall in any other case settled a fair rent;

and in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from

which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under section 104A to 104F.

(9) When a Civil Court has passed final orders or a decree under the section, it shall notify the same to the Collector of the district.

104J. Presumptions as to rents settled under-sections 104A to 104G.—Subject to the provisions of section 104H, all rents settled under sections 104A to 104F and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Part III.

Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.

[This part dealt with proceedings that took place after the final publication of the record-of-rights, in cases where settlement of land-revenue was not made. Sections 105-105C dealt with settlement of rents and questions arising in course of such settlement. Section 106 dealt with the decision of disputes relating to entries and omissions in the record-of-rights.

In cases where settlement of land-revenue was not made and the record-of-rights was finally published with the existing rent recorded under section 102(e), the Revenue-officer would not settle rents and prepare a rent-roll. But though he would not settle rents in every cases, fair and equitable rent might be settled by him in particular cases, on the application of parties, after the record-of-rights was finally published, and within four months of the certificate of final publication.]

105. Settlement of rents by Revenue-officer in cases where a settlment of land-revenue is not being or is not about to be made.—(1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within four months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of clause (j) of section 102 that the occupant of any land claimed to be held rent free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within four months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the Provincial Government may prescribe.

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable and shall have regard to the rules

laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.

105A. Decision of questions arising during the course of settlement of rents under this Part.—Where, in any proceeding for the settlement of rents under this Part, any of the following issues arise :—

(a) whether the land is, or is not, liable to the payment of rent;

(b) whether the land, although entered in the record-of-rights at being held rent-free, is liable to the payment of rent;

(c) whether the relation of landlord and tenant exists;

(d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the land of an estate or tenancy;

(e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(f) whether the special conditions and incidents of the tenancy, or any right of way or other easement

attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded;

(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly :

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

105B. Court-fees for raising an issue under section 105A.—When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under section 106.

105C. Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer—Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.

106. Institution of suit before a Revenue-officer.—(1) In proceedings under this part, a suit may be instituted before a Revenue-officer at any time within four months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 104A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a revenue-officer has made in, or any omission which the said officer has made from, the record, whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether any other land held rent-free is properly so held, or as to any other matter:

and the Revenue officer shall hear and decide the dispute :

Provided that the Revenue-officer may, subject to such rules as the provincial Government may make in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial.

Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands.

107. Procedure to be adopted by Revenue-officer.—In all proceedings under section 105, section 105A and section 106, the Revenue-officer shall subject to rules made by the Provincial Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 115C shall be final.

108. Revision by Revenue-officer.—Any Revenue-officer specially empowered by the Provincial Government in this behalf, may, on application or of his own motion, within twelve months from the making of any order or decision under section 105, section 105A, section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section 115C :

Provided that no such order or decision shall be so revised if an appeal from it has been filed under section 115C or until

reasonable notice has been given to the parties concerned to appear and be heard in the matter.

108A. (Correction by Revenue-officer of mistakes in record-of-rights). Transferred to section 115B, by the Act of 1928.

109. Bar to jurisdiction of Civil Courts.—Subject to the provisions of section 115C, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, suit instituted or proceedings taken under sections 105 to 108 (both inclusive);

Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

(a) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or

(b) has not been finally adjudicated upon in any such proceeding or suit.

109A. (Appeals from decisions of Revenue-officers). Transferred to section 115C, by the Act of 1928.

109B. Power of Revenue-officer to presume that agreements or compromises are lawful.—In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful;

but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statement made by the parties to the agreement or compromise are correct.

109C. Power to Revenue-officer to settle rents on agreement.—(1) Notwithstanding anything contained in section 109B, if in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding,

a Revenue-officer may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such, that, if they were embodied in a contract, they could not be enforced under this Act :

and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 115C, on the ground that the rent settled by the Revenue-officer, under sub-section (1) as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), setting a rent as a fair and equitable rent, direct the revision of the rent so settled :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

109D. Note of decision on record.—A note of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such notes shall be considered as part of the record.

110. Date from which settled rent takes effect.—When a rent is settled by a Revenue-officer under this chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the record-of-rights :

Provided as follows :—

(a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being

or is about to be made, the rent settled shall, subject to the provisions of section 191, take effect from the expiration of the period of the current settlement or from such other date after the expiration of that period as may be fixed by the Revenue-officer :

(b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

111. Stay of proceedings in Civil Court during preparation of record-of-rights.—When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not, —

(a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record of rights, and

(b) where a settlement of land-revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights.

entertain any application of the rent or the determination of the status of any tenant, in the area to which the record-of-rights applies.

111A. Limitation of jurisdiction of Civil Courts in matters, other than rent relating to record-of-rights.—No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it or save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F :

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.

111B. Stay of suits in which certain issues arise.—(1) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within four months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely :—

(a) whether the land is or is not liable to the payment of rent;

(b) whether the relation of landlord and tenant exists;

(c) whether the land is part of a particular estate of tenancy; or

(d) whether there is any special condition or incident of the tenancy or whether any right of way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(3) Where, in the course of setting fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-or-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue ;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of four months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

112. Power to authorise special settlement in special cases.—(1) The Provincial Government may, on being satisfied that the exercise of the powers hereinafter mentioned in necessary in the interest of public order or of the local welfare,

or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer with the following powers or either of them, namely :—

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area, either generally or with reference to specified cases or classes of cases.

(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed.

113. Period for which rents as settled are to remain unaltered.—(1) When the rent of a tenure or holding is settled under this Chapter it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-raiyat having occupancy rights, for fifteen years, and, in the case of a non-occupancy-holding or the holding of an under-raiyat not having occupancy rights, for Five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a).

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

114. Expenses of proceedings under this Chapter.—(1) When the preparation of a record-of-rights has been directed or under-taken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter) or such part of those expenses as the Provincial Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions and in such instalments (if any) as the Provincial Government, having regard to all the circumstances, may determine.

(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Provincial Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

(4) The cost of preparing copies of survey maps and record-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

115. Presumption as to fixity of rent not to apply where record-of-rights has been prepared.—When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

115A. Demarcation of village boundaries.—In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record the area contained within the exterior boundaries of the village maps of the revenue survey or other survey, if any, adopted under clause (19) (b) of section 3 as defining villages ;

and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

115B. Correction by Revenue-officer of mistakes in record-of-rights.—Any Revenue-officer specially empowered by the Provincial Government in this behalf may, on application or of his own motion, within two years from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a bona fide mistake :

Provided that no such correction shall be made if an appeal affecting such entry has been filed under section 115C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

115C. Appeals from decisions of Revenue-officers.—(1) The Provincial Government shall appoint one or more persons to be a Social Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108, (both inclusive) and section 115B.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections 105 to 108, both inclusive, and section 115B, and the provisions of the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908 an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of section 100 of that Code :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled the Court may settle, a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

CHAPTER —XI

Non-accrual of occupancy and non-occupancy rights and record of Proprietor's private lands.

[It was only proprietors who could have any private lands. When the estate was sold the private lands passed on to the purchaser.[1] Proprietors could have no right of occupancy in his parivate lands.[2] All lands were presumed to be raiyati.]

116. Saving as to certain lands. — Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, lands acquired under the Land Acquisition Act, 1894, for the Government or for any local authority or for a Railway Company, or lands belonging to the Crown within a Cantonment, while such lands remained the property of the Crown, or of any local authority or Railway Company, or lands owned by the Crown or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same, or to a proprietor's private lands known as khamar, nij, nij-jot, ziraat, sir or khamat where any such land is held under a lease for a term of years or under a lease from year to year.

Note.—The object of this section was to exclude the proprietor's private lands from the operation of Chapters V and VI. The acquisition of occupancy or non-occupancy right by a tenant in the proprietor's private land could not be prevented unless the landlord proved that when the holding was first created, it was held under a lease for a term of years or from year to year. This section was amended by the Acts of 1907, 1908 and 1928 under which it was provided that no right of occupancy accrued in Government lands in a Cantonment or in lands acquired under the Land Acquisition Act, 1894, while they were the property of Government or a local authority or a Railway Company. Nor did such rights accrue to lands owned by the Government or by any local authority

1. Joy v. Bayee (1867) 7 W. R. 40.
2. Reed v. Sreekishen (1871) 15 W. R. 430.

which were used for any public work such as a road, canal or embankment or were required for their repair or maintenance.

117. Power of Provincial Government to order survey and record of proprietor's private lands.—The Provincial Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of section 116.

118. Power for Revenue-officer to record private land on application of proprietor or tenant.—In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Provincial Government, ascertain and record whether the land is or is not proprietor's private land.

119. Procedure for recording private land.—When a Revenue-officer proceeds under section 117 or 118 the provision of sections 103A, 103B, 106, 107, 108, 109 and 115C shall apply.

120. Rules for determination of proprietor's private land.—(1) The Revenue-officer shall record as a proprietor's private land —

(a) land which is proved to have been cultivated as khamar, ziraat, sir, nij, nij-jot or khamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognised by village usage as proprietor's khamar, ziraat, sir, nij, nij-jot or khamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may

be produced; but shall presume that and is not proprietor's private land until the contrary is shown.

(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officer.

CHAPTER —XII

Distraint. [1]

121-142. Repealed by the Act of 1928.

1. For the history of the law of distraint, see author's "The Bengal Raiyats," Chapter 7, Section 2.

CHAPTER —XIII

Judicial Procedure

[This Chapter dealt with the special rules of procedure governing suits and applications between landlord and tenant under the Bengal Tenancy Act. Sections 143 and 144 dealt with the law of procedure and jurisdiction. Section 145 relaxed the rules of procedure in favour of the landlord's agents. Sections 146-153 made certain special provisions for rent suits. Sections 146A and 146B dealt with the rights and liabilities of co-sharer tenants in relation to rent suits, while section 148A dealt with the position of co-sharer landlords. Section 147 controlled the institution of successive rent suits; section 148 laid down certain rules of procedure regarding rent suits. Sections 149-152 provided that in certain cases the tenants' plea in defence would not be entertained without deposit of rent or part thereof in Court, Sections 153 and 153A dealt with appeals in rent suits and application for setting aside an ex-parte decree. Section 147A related to compromise in suits between landlord and tenant and section 147B emphasised the evidentiary value of a record-of-rights in such suit, Sections 155 and 156 related to suits for ejectment of a tenant, while section 157 gave the landlord an option, in a suit for ejectment of a trespasser, to treat the latter as a tenant. Section 158 dealt with an application for determination of the incidents of a tenancy.]

143. Power to modify Civil Procedure Code in its application to suits between landlord and tenant.—(1) The High Court may, from time to time, with the approval of the Provincial Government, make rules, consistent with this Act, declaring that any portions of the Code of Civil Procedure, 1908, shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits.

144. Jurisdiction is procedings under Act.—(1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, 1908, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated.

(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him :

Provided that —

(i) the claim in respect of each tenancy shall be stated separately in the plaint;

(ii) separate decrees shall be made in respect of each tenancy;

(iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and

(iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy.

(3) When under this Act a Civil Court is authorised to make an order on the application of a landlord or a tenant the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

145. Naibs or gumashtas to be recognised agents.—Every naib or gumashta of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognised agent of the landlord within the meaning of the Code of Civil Procedure, 1908, notwithstanding that the landlord may reside within the local limits of the jurisdiction

of the Court in which the suit is to be instituted or is pending, or in which the application is made :

Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such naib or gumashta may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.

146. Special register of suits.—The particulars mentioned in rule 1 of Order VII in Schedule 1 to the Code of Civil Procedure, 1908, shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by rule 2 of Order IV in Schedule I to the said Code, be entered in a special register to be kept by each Civil Court, in such form as the Provincial Government may, from time to time, prescribe in this behalf.

146A. Joint and several liability for rent of co-sharer tenants in a tenure or holding.—(1) Notwithstanding anything contained in the Contract Act, 1872 all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors-in-interests.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include—

(i) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated;

(ii) such of the co-sharer tenants in the tenure or holding as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding;

(iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12, or section 26C, as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 15; and

(iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

Note.—This section was inserted by the Act of 1928. The object of the amendment was to meet the difficulties which the landlords experienced in trying to ascertain all the co-sharers in a holding before a rent-suit was brought with the possibility that the sale of the holding in execution of the decree obtained in that suit might subsequently be held to be invalid as a rent-sale under Chapter XIV on the ground that an absentee co-sharer had been omitted from the suit, it was proposed to enact that each co-sharer tenant should be jointly and severally liable for the rent of the tenancy and the sale would be valid as a rent-sale if the defendants in the suit represented the entire body of co-sharer tenants in the holding. It was also made clear which of the co-sharer tenants would be deemed to represent the entire body of co-sharer tenants.[1]

Sub-section (1) codified the principle laid down in the Full Bench case of Kailash v. Brojendra[2] that all co-sharer tenants were jointly and severally liable for the rent and sub-section (2) adopted the principle laid down in the case of Chamat Kari

1. Notes on clauses.
2. (1925) 29 C. W. N.1000 (F. B.).

v. Triguna[1] that where one of a number of co-sharer tenants was put forward by the rest as their representative, he could be regarded as the sole tenant for the purpose of a suit for arrears of rent and a decree passed against him would be binding against the other co-sharers too, and would have the effect of a rent-decree within the meaning of Chapter XIV even though the other co-sharers were not parties to the suit, Sub-section (3) laid down certain circumstances which would raise a statutory presumption of representation.

146B. Procedure in rent-suit against co-sharer tenants in tenure or holding.—(1) Notwithstanding anything contained in the Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant :

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section 146A, shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section.

Note.—This section was inserted by the Act of 1928 to safeguard the interests of a co-sharer tenant against the operation of the doctrine of representation as embodied in section 146A (3). The landlord could omit a co-sharer in the rent-suit who did not come within the four clauses of that sub-section and such co-sharer might be affected by the decree though he was not a party to the suit. Section 146B, therefore,

1. (1913) 17 C. W. N. 833.

gave such a co-sharer right to be joined as a defendant in the suit and to have it decided in his presence. But there was a time limit for such intervention. If he did not intend to contest the suit but simply wanted to satisfy the claim in order to save the tenure or holding, he could pay the claim and costs at any time in the course of the suit. If he wanted to contest as a defendant or simply to come on the record, he must apply to be joined as a defendant before the hearing of the suit. He must, in either case, satisfy the Court that he was a co-sharer tenant of the holding in suit.

Sub-section (2) provided that the addition of a person joined under section 146B should also be considered in determining whether the tenancy was represented, within the meaning of section 146A.

147. Successive rent-suits.—(1) Subject to the provisions of rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908, where a landlord has instituted a suit against a raiyat or an under-raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after nine months from the date of the institution of the previous suit.

(2) Nothing in sub-section (1) nor in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall be deemed to prevent a landlord instituting a suit for a portion of the arrears of rent in respect of a holding, provided that—

(a) the claim in such suit shall be for the rent or the balance of the rent due for a complete agricultural year or years; and

(b) the plaint shall contain in addition to the particulars specified in clause (b) of section 148, the total claim which might have been made on the date of the institution of the suit, and the period to which the said total claim relates.

(3) Where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A, the date of the institution of the subsequent suit shall,

for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

147A. Compromise of suits between landlord and tenant. – (1) Notwithstanding anything contained in rule 3 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise the Court shall not order an agreement or compromise to be recorded and shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act:

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordances with the rules laid down in this Act for the guidance of Courts in increasing rents.

(2) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant shall be recorded as an occupancy-raiyat; this affects the rights of the tenants of B. The Court must, under this sub-section, inquire whether B is a tenure-holder or a raiyat as defined in section 5. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

147B. Regard to be had by Civil Courts to entries in record of rights.—In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord

and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

148. Procedure in rent-suits—The following rules shall apply to suits for the recovery of rent :—

(a) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule I to the Code of Civil Procedure, 1908, a statement of the situations, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries in lieu thereof a description sufficient for identification. The plaint shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land;

(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the rocord-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement :

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it seems fit the Court may require the Collector to supply, without payment of fee, a

verified or certified copy of, or extract from, the record-of-rights relating to the tenancy :

Provided also that when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as referred to in clause (b) shall be required except in so far as may be necessary for the purposes of clause (d) ;

(d) where any changes have occurred in the area, survey, plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement showing the particulars of such changes;

(e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

(f) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Chapter VI of the Post Office. Act, 1898 ;

When a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered the Court may presume that the summons has been duly served ;

(g) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identity of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and, where he is unable to serve the summons,

he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed;

(h) notwithstanding anything contained in rule 4(3) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of complaince with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit ;

(i) a written statement shall not be filed without the leave of the Court, but the Court shall record its reasons for granting or refusing such leave;

(j) the rules of recording the evidence of witnesses contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908, shall apply, whether an appeal is allowed or not ;

(k) (i) notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form ;

(ia) service of the special summons referred to in sub-clause (i) shall ordinarily be effected by forwarding the summons by post in a letter with acknowledgement due addressed to the defendant and registered under Chapter VI of the Post Office Act, 1898; and

when a summons is so forwarded, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(ii) when a special summons referred to in sub-clause (i) has been served, if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of six per cent per annum from the date of the suit up to the date of payment and for costs with interest thereon :

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim :

Provided also that notwithstanding anything contained in section 13 of the Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any subsequent suit or proceeding;

(iii) within seven days after the passing of a decree under sub-clause (ii) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered post card in the prescribed form stating the particulars contained in the decree and no action in execution of a decree shall be taken until a period of sixty days has elapsed since the date of the decree ;

(iiia) notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, no interest shall be payable from the date of the decree on the aggregate sum decreed, if such aggregate sum is paid in full by the judgement-debtor within sixty days from date of the decree ;

(iv) notwithstanding anything contained in rule 13 of Order IX in Schedule I to the code of Civil Procedure, 1908, or in section 153A of this Act, where a decree is passed ex-parte against a defendant under sub-clause (ii), he may apply to the Court by which the decree was passed for an order to set aside the decree, if it is satisfied that summons was not duly served and that there is prima facie evidence of a bona fide defence, may make an order setting aside the decree as against him or if necessary against all or any of the other defendants also;

(l) when any account books, rent-rolls, collection-papers, measurement-papers, maps or extracts from records-of-rights have been produced by a party before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, may be certified by a duly authorised officer of such Court to be true copies or extracts without the payment of any court-fee, and such copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the party,

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced seems fit to require the production of the originals;

(m) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof;

(n) notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh vakalatnama for the purpose of executing the decree;

(o) notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, an application for the execution of a decree for

arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

Note.—The procedure in rent-suits is laid down in Chapters XIII and XIV of the Bengal Tenancy Act. 1885. The policy of the legislature in making such special provisions was on the one hand to provide for the speedy realization of rent by the landlord and on the other hand to safeguard tenants,[1] from successive suits,[2] and improvident compromises.[3] The Code of Civil Procedure, 1908 applied in a rent-suit subject to the provisions of the Bengal Tenancy Act. A rent-suit must be instituted in the Civil Court which would have jurisdiction to entertain a suit for the possession of the holding in connection with which the suit was brought.[4] Where a landlord instituted a suit against a raiyat for the recovery of any rent of his holding, he could not institute another suit against him for the recovery of any rent of that holding until after nine months from the date of the institution of the previous suit.[5].

The plaint in a rent-suit must, in addition to other particulars, contain a statement of the situation, designation, extent and boundaries of the land held by the tenant. But where the plaintiff was unable to give the extent or boundaries of the land, he had to give a description sufficient for its identification. It was also necessary that the plaint should contain a statement as to whether a record-of-rights was prepared and finally published in respect of such land. If it was finally published, it was sufficient to give in the plaint the khatian number of the tenancy, the survey plot number and the area and rental according to such record. Where any changes had occurred in the area, survey plots or rent of the tenancy since the final publication of the record-of-rights, it

1. Raja Ban Behari v. Khetterpal (1911) 16 C. W. N. 259 at 361.
2. Sec. 147(1).
3. Sec. 147A (1).
4. Sec. 144.
5. Sec. 147 (1).

was necessary to include in the plaint a statement showing the particulars of such changes.

A written statement could not be filed without the leave of the Court but the Court was obliged to record its reasons for granting or refusing such leave. When the defendant admitted that money was due from him on account of rent, but pleaded that it was due not to the plaintiff but to a third person[1] or that the amount claimed was in excess of the amount due,[2] the Court would refuse to take cognizance of the plea, unless the defendant paid into Court the amount admitted to be due[3] or such reasonable portion of the money as the Court directed.[4] The Court might, when passing the decree, order its execution on the oral application of the decree-holder.

When the decree was passed ex-parte against a tenant, he could apply to the Court by which the decree was passed for an order to set aside the decree. If the Court was satisfied that summons was not duly served and that there was prima facie evidence of a bona fide defence, it might make an order setting aside the decree. An essential ingredient of every application for an order to set aside a decree passed ex-parte, or for a review of judgement was a statement of the injury sustained by the applicant by reason of the decree or judgement and no such application was admitted (a) unless the applicant, at or before the time when the application was admitted, deposited in Court to which the application was presented the amount, if any, which he admitted to be due from him to the decree-holder, or such amount as the Court might direct; or (b) unless the Court, after considering the statement of injury, was satisfied that no such deposit was necessary.[5]

In execution of decree against a tenant in a rent suit, a tenure or a holding at fixed rate was ordinarily sold subject to all registered or notified incumbrances.[6] But if the bidding

1. Sec. 149(1).
2. Sec. 150.
3. Sec. 149 (1) & Sec. 150.
4. Sec. 151.
5. Sec. 153A.
6. Sec.164.

did not reach a sum sufficient to liqudate the amount of the decree and costs and if the decree-holder desired that the tenure or holding should be sold with power to avoid all incumbrances, they were sold on a subsequent day with power to annul all incumbrances.[1] An occupancy holding, however, was put up to sale in the first instance with power to avoid all incumbrances.[2] The procedure for annulling incumbrances was contained in section 167 of the Act; and that procedure was the only method by which incumbrances could be avoided.[3] Under that section a purchaser of a tenure or a holding at fixed rate or an occupancy holding might within one year from the date of the confirmation of the sale or the date on which he first had notice of the incumbrance whichever was later, present to the Court an application in writing requesting him to serve on the incumbrancer a notice declaring that the incumbrance was annulled.[4] The incumbrance was deemed to be annulled from the date on which the notice was served.[5] The sale of a tenure or a holding did not make any incumbrance thereupon ipso facto void.[6]

When an order for the sale of a tenure or a holding for arrears of rent was made, the tenure or holding could not be released from attachment unless, before it was knocked down to the auction purchaser, the amount of the decree, together with the cost incurred, was paid into Court, or the decree-holder made an application for the release of the tenure or holding on the ground that the decree had been satisfied out of Court.[7]

Before the sale took place the judgement-debtor or any person whose interests were affected by the sale could pay money into Court.[8] But it was an error on the part of the Court

1. Sec.165(1).
2. Sec. 166(1).
3. Sec.165(2).
4. Sec.167(1).
5. sec.167(3).
6. Beni v. Rewat (1897) I. L. R. 24 Cal. 746.
7. Sec. 170 (2).
8. Sec. 170(3).

to accept money from any person without first of all deciding whether he had in the tenure or holding any interest voidable by the sale.[1] When any person, whose interests were affected by the sale of the tenure or holding advertised for sale in execution of a decree for arrears of rent, paid into Court the amount requisite to prevent the sale —

(a) the amount so paid by him was deemed to be a debt bearing interest at 12 p.c. per annum and secured by a mortgage of the holding to him;

(b) his mortgage took priority of every other charge on the tenure or holding other than a charge for arrears of rent; and

(c) he was entitled to possession of the tenure or holding as mortgagee of the tenant and to retain possession of it as such until the debt, with interest due thereon, had been discharged.[2]

The decree-holder might bid for or purchase the tenure or holding without the permission of the Court, but the judgement-debtor could not bid for or purchase a tenure or a holding so sold.[3] When a judgement debtor purchased by himself or through another person a tenure or a holding so sold, the Court might, if it thought fit, on the application of the decree-holder or any other person interested in the sale, set aside the sale.[4]

When a tenure or a holding was sold for arrears of rent, the judgement debtor or any person whose interests were affected by the sale might, at any time within 30 days from the date of the sale, apply to the Court to have the sale set aside on his depositing in Court (a) for payment to the decree holder, the amount recoverable under the decree with costs and (b) for payment to the auction purchaser, as penalty a sum equal to 5 p.c. of the purchase money, but not less than one rupee.[5] The

1. Gobinda v. Chan (1912) 17 C. W. N. 602 at 604.
2. Sec. 171(1).
3. Sec. 173(1).
4. Sec. 173(3).
5. Sec. 174(1).

deposit had to be made strictly within the time allowed by law; the Court had no power in extend the time.[1] But if the judgement-debtor was prevented by on act of Court from depositing the money within the specified period, he might do so at the first opportunity after the expiry of that period, for an act of Court cannot prejudice a man (actus curiae neminem gravabit).[2] Thus if the Court was closed on or before the last day of the period limited, he might pay the said sum into Court on the first day the Court reopened.[3] A conditional deposit was sufficient.[4] It was essential that the deposit should be such that the decree-holder and the purchaser might withdraw it at once.[5]

When no application was made for setting aside the sale within 30 days from the date of the sale or where such application was made but disallowed, the Court made an order confirming the sale and thereupon the sale became absolute.[6] Even after the order of confirmation had been passed, the decree-holder, the judgement-debtor or any other person whose interests were affected by the sale, might, at any time within 6 months from the date of the sale, apply to the Court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting the sale.[7] Where such an application was made and allowed, the order of confirmation of sale was deemed to be cancelled.[8] But no sale could be set aside on any such ground unless (a) the Court was satisfied that the applicant had sustained substantial injury by reason of such irregularity or fraud and (b) the applicant had either deposited the decretal amount or satisfied the Court that no

1. Raghubar v. Jadunandan (1911) 16 C. W. N. 736.
2. Akbar v. Sukhdeo (1911) 13 C. L. J. 467 at 470.
3. Shooshee v. Gobind (1890) I. L. R. 18 Cal. 231.
4. Dulhin v. Bansidhar (1911) 16 C. W. N. 904.
5. Shakoti v. Moharaja (1896) I. C. W. N. 132 ; Rahim v. Nundo (1887) I. L. R. 14 Cal. 331.
6. Sec. 174A(1).
7. Sec. 174(3).
8. Sec. 174A (5).

such deposit was necessary.[1] An appeal lay against an order setting aside or refusing to set aside a sale.[2]

The right to appeal against a rent-decree and proceedings in execution of a rent-decree was to a certain extent restricted by a special provision of law in section 153 of the Bengal Tenancy Act. Under that section an appeal did not lie from any decree or order passed, whether in first instance or on appeal in any suit instituted by a landlord for the recovery of rent where (a) the decree or order was passed by a District Judge, Additional District Judge or Sub-ordinate Judge and the amount claimed in the suit did not exceed one hundred rupees, or (b) the decree or order was passed by any other judicial officer specially empowered by the High Court to exercise final jurisdiction and the amount claimed in the suit did not exceed fifty rupees. The object of this provision was to prevent protracted illigation in cases of small value not affecting any permanent interests.[3] But an appeal lay if in either case the decree or order decided (a) a question relating to title to land or to some interest in land as between parties claiming adversely to each other or (b) a question of a right to enhance or vary the rent of a tenant, or (c) a question of the amount of rent annually payable by a tenant.[4] But the regularity of the proceedings or a sale in execution of a decree for arrears of rent was not a question relating to title to land or an interest in land, as between parties having conflicting claims thereto.[5] The bar to an appeal under that section, therefore, depended on two facts : (a) the amount of the claim in the suit, and (b) the nature of the decree made in the action. The words "amount claimed" meant not merely the rent claimed but the whole amount claimed in the suit including rent and interest.[6] Where, therefore, the amount of rent was

1. Sec. 174(3), Proviso.
2. Sec. 174(5).
3. Shyama v. Debendra (1900) I. L. B. 27 Cal. 484 at 487.
4. Sec. 153.
5. Sec. 133, Expl.
6. Behary v. Bhutnath (1898) 3 C. W. N. 214; Tarini v. Kedar (1928) 33 C. W. N. 126 F. B.

below Rs.100 but with interest exceeded that amount it was held[1] that a second appeal was not barred. The word 'suit' in section 153 of the Act included all proceddings in execution of the decree made in the suit.[2] Therefore no second appeal lay against an order made in the course of execution, unless it fulfilled the same condition.[3] The word 'order' in the section meant not merely a final order but an interlocutory order, such as an order of remand. Therefore, an appeal from an order of remand in an action for rent for less than Rs.100 was barred, unless the order determined any of the questions mentioned above.[4]

148A. Power to co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.—(1) A co-sharer landlord may institute a suit to recover the rent due to him a respect of his share in a tenure or holding by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

(2) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer land-lords aforesaid to join the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

1. Behary v. Bhutnath (1898) 3 C. W. N. 214.
2. Shyama v. Debendra (1900) I. L. R. 27 Cal. 484 at 486.
3. Ibid.
4. Bhabani v. Pratap (1904) 8 c. W. N. 575.

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landed shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (1) :

Provided that, if the Court is not competent to consolidated and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

(5) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of the section shall, so far as may be, specify separately the amounts payable to such co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(7) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other so-sharers.

(8) (i) In disposing of the proceeds of the sale in execution of the decree referred to in sub-section (6) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, —

(a) there shall first be paid to the decree holders the costs incurred by them in bringing the tenure or holding to sale;

(b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree holders and to any defendants landlords, who have not joined as plaintiffs but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding :

Provided that the Court shall issue a notice to the judgement debtor or his pleader, if any, before ordering any such payment;

(d) the balance (if any) remaining after the payment of the rent mentioned in clauses (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgement-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgement-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any suit on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

(9) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord, who has been made a party defendant thereto, and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(10) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities herein before provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

(11) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order 11 in Schedule 1 to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plantiff under sub-section (3) or is deemed to be a co-plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

(12) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (e) of sub-section (8) or of sub-section (11).

149. Payment into Court of money admitted to be due to third person.—(1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plantiff, but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtain an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

150. Payment into Court of money admitted to be due to landlord. — When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

151. Provisions as to payment of portion of money.—When a defendant is liable to pay money into Court under section 149 or 150 if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

152. Court to grant receipt—When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

153. Appeals in rent suits.—An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the High Court to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisidction so vested or has acted in the exercise of his jurisidction illegally or with

material irregularity and may pass such order as the District Judge thinks fit.

Explanation.—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

153A. Deposit on application to set aside ex-parte decree. — Every application for an order under rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908 to set aside a decree passed ex-parte, or for a review of judgement, under section 114 and rule I of Order XLVII in Schedule I to the said Code in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgement :

and no such application shall be admitted —

(a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

154. Date from which decree for enhancement takes effect. — A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

155. Relief against forfeitures.—(1) A suit for the ejectment of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord liable to ejectment,

shall not be entertained unless the loandlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach, is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse of breach, is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Note.—This section governed sections 10, 18(1)(b), 25, 44(b) and 48 C(b). While section 89 laid down that even if the tenant was liable to be ejected on the ground of misuse or breach of condition under any of the foregoing sections, the landlord was not entitled to eject the tenant without obtaining a decree

in a suit brought for the purposes. Section 155 laid down certain conditions precedent to the institution of such a suit and also the nature and contents of the decree in such suit.

Under sub-section (1) it was a condition precedent to the institution of an ejectment suit that the landlord should serve on the tenant before filing such a suit, a notice, specifying the particular misuse or breach complained of, and where the misuse or breach was capable of remedy, requiring the tenant to remedy the same, and in any case asking him to pay reasonable compensation for the misuse or breach. The object of the notice under this section was to give the tenant an opportunity of avoiding ejectment by remedying the misuse or breach if that was possible or paying reasonable compensation. If the tenant failed to comply with the demand within a reasonable time, the landlord could bring a suit for ejectment, the procedure for which was laid down in sub-section 2, 3 and 4. If the condition precedent was not complied with, the suit for ejectment could not be entertained by the Court.

Sub-sections (2) and (4) related to the form of decree and its execution. Whether the misuse or breach was capable of remedy or not, the Court must specify a sum which would be reasonable compensation for the breach or misuse. If the breach or misuse was not capable of remedy the Court would fix a period within which it should be open to the defendant to pay the compensation to the plaintiff and avoid ejectment. If the compensation was not paid within the period, the remedy of the plaintiff was to execute the decree for ejectment and not for compensation. If the breach or misuse was capable of remedy, the Court should declare it and direct the defendant to remedy the same and also to pay the compensation within a given time. If there was a non-compliance with both or either of the orders, the plaintiff was entitled to execute the decree for ejectment. Ejectment was the penalty for non-compliance with the order for remedying the misuse or breach and payment of compensation. The decree-holder could not ask both for compensation and ejectment.[1]

1. Karim v. Aswini (1921) 25 C. W. N. 658.

Under sub-section (3) it was competent to the Court to entertain an application for enlargement of time after expiry of the period prescribed in the decree and even after the decree-holder applied for execution.[1]

156. Rights of ejected raiyats in respect of crops and land prepared for sowing.—The following rules shall apply in the case of every raiyat or under-raiyat ejected from a holding —

(a) when the raiyat or under-raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering, in the crops or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(b) when the raiyat or under-raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;

(c) but a raiyat or under-raiyat shall not be entitled to retain possession of any land, or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to the local usage; and

(d) if the landlord elects under this section of allow a raiyat or under-raiyat to retain possession of the land, the raiyat or under-raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same,

1. Syam v. Satinath (1916) 24 C. L. J. 523.

such rent as the Court executing the decree for ejectment may deem reasonable.

Note.—Under the Bengal Tenancy Act, 1885 when a raiyat had, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he was entitled, at the option of the landlord, either to retain possession of that land on such terms as the Court might deem reasonable, until the crops were reaped or to receive from the landlord the value of the crops as estimated by the Court. When he had, before the date of his ejectment, prepared for sowing any land comprised in his holding but had not sown or planted crops in that land, he was entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest. But he was not entitled to retain possession of any land or receive any sum in respect thereof when after the commencement of proceedings by the landlord for his ejectment, he had cultivated or prepared the land contrary to the local usage. If the landlord elected to allow him to retain possession of the land, he had to pay to the landlord, for the use and occupation of the land during the period for which he was allowed to retain possession of the same, such rent as the Court executing the decree for ejectment might deem resonable. The provision of the Act in respect of the rights of the ejected raiyat in crops and land prepared for sowing was more elaborate than that which was originally proposed by the Rent Law Commission, 1880.[1]

The branch of the law which relates to rights of an ejected raiyat, in respect of crops and land prepared for sowing, is generally known as the law of emblements. The word 'emblements' has technical sense in the English law meaning "a right given by law in certain cases to the tenant of an estate of uncertain duration, which has unexpectedly determined, without any fault of such tenant, to take the stop growing upon the land when his estate determines. The growing crops or the vegetable productions of the soil which are annually

1. Para. 145 of the report.

produced by the labour of the cultivator are emblements." In this sense of the term there was no law of emblements in our country so far as agricultural holdings were concerned.[2]

157. Power for Court to fix fair rent as alternative to ejectment.—When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

158. Application to determine incidents of tenancy.—(1) Subject to the provisions of section 111, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely :—

(a) the situation, quantity and boundaries of the land;

(b) the name and description of the tenant thereof (if any);

(c) the class or classes to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat with or without a right of occupancy and if he is a tenure-holder, whether he is a permanent tenure holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and

(d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908, by such Revnue-officer as the Provincial Government may authorise in that behalf by rule made under rule 9 of Order XXVI in Schedule I to the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

2. Akhil v. Surendra (1905) 11 C. L. J. 87; Lakhan v. Jainath (1907) I. L. R. 34 Cal. 516 at 523 and 538 F. B.

CHAPTER -XIII-A

158A to 158 AAA. Repealed by the Act of 1938.

CHAPTER -XIV

Sale for arrears under decree.

[This Chapter dealt with special provisions regarding execution of a decree for sale of a tenure or holding for arrears of rent which differed from the ordinary procedure for an execution sale under the Civil Procedure Code.

Section 159 dealt with the power to annul incumbrances and laid down that the purchaser must take subject to "protected interests" which are defined in section 160. Section 161 defined "incumbrances" and "registered incumbrances". Section 163 laid down the procedure for publication of the sale of a tenure or holding in execution of a decree for rent. Sections 164-165 laid down the procedure for sale of a tenure or holding at fixed rates and the position of registered incumbrances in relation thereto. Section 166 provided for the sale of an occupancy holding. Section 167 laid down the procedure for annulling incumbrances. Section 168A dealt with the sale of a tenure or holding for arrears of rent. This section also made the auction purchaser liable for the deficiency between the purchase price and the amount due under the decree or certificate. Sections 169 provided for rules for disposal of sale proceeds. Section 170-172 enacted laws to prevent sale by deposit before the sale was held and laid down the rights of the depositor when he was a person other than the judgement-debtor. Sections 174-174A provided for the confirmation and setting aside oft he sale.]

158B. Repealed by the Act of 1928.

159. General powers of purchaser as to avoidance of incumbrances.—(1) Where a tenure of holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interest," but with power to annul the interests defined in this Chapter as "incumbrances" :

Provided as follows :—

(a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf

(b) the power to annul shall be exercisable only in manner by this Chapter directed.

(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

160. Protected interests. —The following shall be deemed to be protected interests within the meaning of this Chapter :—

(a) any under-tenure existing from the time of the Permanent Settlement;

(b) any under-tenure recognised by the settlement proceedings of any current temporary settlement as a tenure at rent fixed for the period of that settlement;

(c) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, cnals, places of worship or burning or burying grounds have been made;

(d) any right of occupancy;

(e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;

(f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred;

(ff) the right of a raiyat at fixed rates to hold at a fixed rent or rate of rent which has not been changed during twenty years; and

(g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor-in-title, has expressly and in writing given the tenant for the time being permission to create.

161. Meaning of "incumbrance" and "registered and notified incumbrance".—For the purpose of this Chapter—

(a) the term "incumbrances", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in section 160 ;

(b) the term "registered and notified incumbrance" used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;

(c) the terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68.

162. Application for sale of tenure or holding.—When a decree has been passed for an arrear of rent due for a tenure or holding and the decree-holder applies under rule 11(2) of Order XXI in Schedule I to the Code of Civil Procedure, 1908 for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

163. Combined order of attachment and proclamation of sale to be issued.—(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree holder makes the application mentioned in section 162, the Court if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in rule 66 of Order XXI in Schedule I to the said Code announce—

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances, if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances; and

(b) in the case of an occupancy-holding not held at fixed rates, that the holding will be sold with power to annul all incumbrances.

(2a) In the case of a holding of a non-occupancy-raiyat or an under-raiyat not having a right of occupancy, the proclamation shall also state the nature of the right, title and interest of such raiyat or under-raiyat in such holding.

(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 in Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner:—

(a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,

(b) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing Court,

(c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and

(d) in such other manner as may be prescribed.

(4) Notwithstanding anyhting contained in rule 68 of Order XXI in Schedule I to the said Code the sale shall not, without the consent in writing of the judgement debtor, take

place, until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.—(1) When tenure or holding at fixed rates has been advertised for sale under section 163, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrances.

165. Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.—(1) If the bidding for a tenure or a holding at fixed rates put up to auction under section 164 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decreeholder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation in accordance with the procedure provided in sub-section (3) of section 163 announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement, and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. Sale of occupancy holding with power to avoid all incumbrances, and effect thereof.—(1) When an occpancy holding not held at fixed rates has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may in manner provided by section 167 and not otherwise, annul any incumbrance on the holding.

167. Procedure for annulling incumbrances, under section 164, 165 or 166.—(1) A purchaser having power to annul an incumbrance under section 164, 165 or 166 or under the Bengal Public Demands Recovery Act, 1913, and desiring to annul the same, may within one year from the date of the confirmation of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Court which passed the decree or the Revenue-officer who made the order, as the case may be, for sale of the property an application in writing requsting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made in manner provided by this section, the Court or Revenue-officer, as the case may be, shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure, or holding is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c) the purchaser may, if he has power under this Chapter or that Act to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. Power to direct that occupancy-holdings be dealt with under sections 159 to 167 as tenures.—(1) The Provincial Government may from time to time, by notification in the Official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of a decree for an arrear of rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incum-brances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under sections 159 to 167 of this Chapter, be treated in all respects as if they were tenures.

168A. Sale of tenure or holding for arrears of rent due thereon and liability of purchasers thereof.—(1) When a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, whether having the effect of a rent decree or money decree, or in execution of a certificate for such arrears signed under the Bengal Public Demands Recovery Act. 1913, the purchaser shall be liable to pay to the decree holder or certificate holder the deficiency, if any, between the purchase price and the amount due under the decree or certificate together with the costs incurred in bringing the tenure or holding to sale and any rent which may have become payable to the decree holder or certificate-holder between the date of the institution of the suit or the signing of the certificate and the date of the confirmation of the sale.

(2) Any such sale shall not be confirmed until the purchaser has deposited with the Court or Certificate officer, as the case may be, the sum referred to in sub section (1).

169. Rules for disposal of the sale proceeds.—(1) In disposing of the proceeds of a sale under this Chapter other than a sale in execution of a decree in a suit instituted under

sub-section (1) of section 148A the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say :—

(a) there shall first be paid to the decree holder the costs incurred by him in bringing the tenure or holding to sale;

(b) there shall, in the next place, be paid to the decreeholder the amount due to him under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder there from the costs of the application under this section and any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgement-debtor upon his application unless the Court for reasons to be recorded in writing otherwise directs.

(2) If the judgement-debtor dispute the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

170. Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.—(1) Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to Code of Civil Procedure, 1908 shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser the amount of the decree, including the costs decreed, together with the costs

incurred in order to the sale, is paid into Court, or the decreeholder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgement-debtor or in the case where the order for the sale relates to a tenure or holding other than any holding of a non-occupancy-raiyat or of an under-raiyat not having a right of occupancy any person whose interests are affected by the sale, may pay money into Court under this section.

(4) The withdrawal of the amount deposited under this section or section 174 by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

171. Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.—(1) When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913 pays into Court the amount requisite to prevent the sale—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain posession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

172. Inferior tenant paying into Court may deduct from rent. — When a tenure or holding is advertised for sale —

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting.

or when such sale is set aside under section 174 and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amouint so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

173. Decree-holder may bid at sale ; judgement-debtor may not.—(1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgement-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgement-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person intersted in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of piece which may happen on the resale, and all expenses attending it shall be paid by the judgement-debtor.

174. Application to set aside sale.—(1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgement-debtor or in the case of the sale of the tenure or holdiong other than any holding of a non-occupancy raiyat or of an under-raiyat not having a right of occupancy any person

whose interests are affacted by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;

(b) for payment to the auction-purchaser, as penalty a sum equal to five per cent of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under sub-section (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or presecute an application made under sub-section (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgement-debtor, or in the case of the sale of a tenure or holding other than a holding of a non-occupancy-raiyat or of an under-raiyat not having a right of occupancy any person whose intersts are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

Provided as follows :—

(a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and

(b) no application made by a judgement debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale :

Provided that where the Court has refused to set aside the sale on the application of the judgement debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.

174A. Sale when to become absolute or be set aside, and return of purchase money in certain cases.—(1) Where no application is made under sub-section (I) of section 174 within thirty days from the date of sale or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase-money has been paid for its repayment with or without interest as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

(5) Notwithstanding anything contained in this section, an application may be made under sub-section (3) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.

175. Repealed by the Act of 1930.

176. Notification of incumbrances to landlord.—Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding, and creating an incumbrance on the tenure or holding, shall at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Provincial Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

177. Power to create incumbrances not extended.—Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER -XV

Contract And Custom

178. Restrictions on exclusion of Act by agreement.—(1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act —

(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(b) shall take away an occupancy-right in existence at the date of the contract, or

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, or

(e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or,

(f) shall take away or limit the rights of an under-raiyat as against his immediate landlord, as set forth in Chapter VII, or

(g) shall take away or limit the right of an occupancy-raiyat to transfer his holding or any share or portion thereof in accordance with the provisions of section 26B to 26G, or

(h) shall take away or limit the rights of occupancy-raiyats in trees on their holdings, as provided in section 23A, or

(i) shall affect the provisions of section 67 relating to interest payable on arrears of rent.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act, an occupancy right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall —

(a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;

(b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(c) take away the right of a raiyat or under-raiyat to surrender his holding in accordance with section 86;

(d) take away the right of an occupancy-raiyat to sub-let subject to, and in accordance with, the provisions of this Act,

(e) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

Provided as follows :—

(i) nothing in this section shall affect the terms or conditions of a lease granted bona fide for the reclamation of waste-land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation.—The expression "horticultural land," as used in provisio (iii), means garden land, in the occupation of

a proprietor or permanent tenure-holder, which is used bona fide for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

Note.—The restrictions on contract in this section may be divided into three classes : the first referred to all contracts past and future, the second, to contracts between 15th July 1880 (the date of publication of the report of the Rent Law Commission) and 14th March 1885 (the date of passing of the Bengal Tenancy Act), prohibited the acquisition of occupancy rights; the third to contracts, made after the passing of the Act, barring the acquisition of the right of occupancy or interfering with certain rights enjoyable by the raiyats.

Leases relating to waste land were, however, exempted from those restrictions. When a lease was granted bona fide for the reclamation of waste land, the accrual of the occupancy right could be barred till the expiry of the term of the lease. But nothing in the lease should operate so as to destroy an occupancy right which grew during the lease. And where a landlord reclaimed waste lands by his own servants or hired labourers and subsequently let it, the raiyat would acquire no occupancy right in it for the first thirty years of such lease, if a stipulation to that effect was made in the contract. These exceptions were meant to encourage reclamation by landlord. The accrual of the occupancy right might also be barred in orchard or horticultural land temporarily let out for cultivation with agricultural crops. The exception was extended to the horticultural land by the Amending Acts of 1907 and 1908. If a tenant was given a temporary lease of such lands, he should not be allowed to retain them after the expiry of the lease, on the plea that occupancy rights accrued.

It may be observed that the main object of putting restriction upon the raiyat's contractual rights was to safeguard their interests and to protect them from improvident acts depriving themselves of the benefits conferred by the various provisions of the Bengal Tenancy Act, 1885. It was an exercise of the parental care, which, in

effect, treated them as permanent minors incapable of escape from the fetters imposed by law on their power of contract but those restrictions saved the whole agricultural community of Bengal from falling into the total clutches of the landlords and the mahajans.

179. Permanent mukarrari leases.—Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant :

Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an abwab or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77.

180. Utbandi, char and diara land.—(1) Notwithstanding anything in this Act, a raiyat—

(a) who, in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as char or diara, shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of utbandi and for the time being held under that custom, or

in case (b), in the char or diara land,

until he has held the land in question for twelve continuous years and until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, or, after hearing both landlord and tenant, of his own motion, declare that any land has ceased to be char or diara land

within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Note.—"Utbandi" means assessment according to cultivation. An utbandi tenancy was described as a tenancy from year to year and sometimes from season to season, the rent being regulated not by a lump payment in money for the land cultivated but by the appraisement of the crop on the ground, and according to its character. So far it resembled the tenancy by crop appraisement of the bhaoli system; but there was between them this marked difference, that while in the latter the land did not change hands from year to year, in the former, it did. The utbandi lands were also known as naksan or loksan lands. The system prevailed in the district of 24-Parganas, Nadia, Jessore, Khulna, Murshidabad, and Pubna. It originated from the district of Nadia, from which it spread to neighbouring district, though in no district was it as common as in Nadia, where about five-eighths of the cultivated lands were held under it. The system had its origin originally perhaps in the poverty of the soil and was stimulated by the cultivation of indigo. The nature and incidents of that system were also discussed in some cases.[1]

Broadly speaking, it may be said that utbandi system was a tenancy-at-will. The amount of rent of utbandi land varied from year to year. The tenant was at liberty to relinquish at the end of the year any portion of the land cultivated in the previous year that he thought fit or he could take up new land with the landlord's consent, express or implied, and the landlord was at liberty to oust the tenant from the whole or any part of his utbandi land that he thought fit at the end of the year. This was the normal type of the utbandi tenure.

Section 180 (1) laid down that an utbandi tenant could acquire no right of occupancy until he held the same land for 12 years continuously and that, until he acquired such a right he was liable to pay the rent agreed on between him and the

1. See author's "The Bengal Raiyats", Ch. 2, Sec.3 (5) and cases noted therein.

landlord. It may be observed that under those circumstances it was practically impossible for a tenant to acquire a right of occupancy in utbandi lands except with the consent of the landlord.

Section 180 pat the utbandi lands on the same footing generally as char or diara lands but provided in sub-section (3) that the Collector might on the application of the landlord or tenant or on a reference from the Civil Court, declare that any land had ceased to be char or diara land where upon all the provisions of the Act would apply to such land. No such power was given to the Collector to declare that utbandi land had ceased to be utbandi or that the custom of utbandi should cease to prevail in respect of any such land.

Sub-section (2) expressly excluded raiyats holding lands under the custom of utbandi from the benefits conferred on non-occupancy raiyats by Chapter VI of the Act, but no mention was made of the exclusion of char and diara lands. The effect was that raiyats of char and diara lands, where they did not acquire rights of occupancy, had all the privileges and rights of non-occupancy raiyats.

180A. Fixing of uniform annual money rent in respect of utbandi lands.—(1) Notwithstanding anything contained in section 180, when a raiyat who is or who but for the operation of section 180 in respect of land held under the custom of utbandi would have been, a settled raiyat of the village, holds or has held under the custom of utbandi, or under any form of tenancy locally known as utbandi land (hereinafter referred to as utbandi land), either the landlord or the raiyat may apply to have a uniform annual money rent determined for the land.

(2) The application shall include at the discretion of the applicant either —

(a) all utbandi lands held in the same village by the same raiyat under the same landlord in which the raiyat has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(b) all the lands held in the same village under the same landlord by the raiyat which the raiyat or any

deceased person whose heir he is, has cultivated as utbandi land at any time during the preceeding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy-rights therein,

or

(c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as utbandi lands in the same village by one or more raiyats under him and a joint application may be made by two or more raiyats in respect of lands held by them as utbandi lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Provincial Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Provincial Government.

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord or the raiyat is a temporary tenure-holder or ijaradar, the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenureholder.

(7) If the application is made in respect of lands in which the raiyat has not acquired occupancy-rights, the officer may reject it in respect of such lands, if he is satisfied in view of all

the circumstances of the case that it is unreasonable to grant it :

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the raiyat has not acquired occupancy-rights, a premium to be paid to the landlord, and he shall order that the raiyat shall, in lieu of paying the rent for the land as utbandi land, pay the sum so determined and the premium, if any :

Provided that in any case in which an order fixing a uniform annual money rent is passed ex-parte the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent :

Provided that the officer may also take into consideration—

(a) the average money rent payable by occupancy-raiyats for land of a similar description and with similar advantages to the vicinity;

(b) the average rates for lands of a similar description and with similar advantages in the vicinity held as utbandi lands;

(c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands as utbandi lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise ;

(d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the utbandi lands and the arrangements made for continuing those charges;

(e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on accouont of the holdings of occupancy raiyats;

(f) any sum agreed to by the parties to be paid as money rent :

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(10) The premium to be paid to the landlord in the case of lands in which the raiyat has not acquired occupancy-rights shall be three times the rent, or, if the application is made under clause (c) of sub-section (2), three times the portion of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the raiyat is a temporary tenure-holder or ijaradar the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or ijaradar and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary

tenure-holder or ijaradar or his successor-in-interest as an arrear of rent but shall not be recoverable by the superior landlord from the raiyat.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the raiyat, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (8) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(14) The premium or any instalment thereof shall be recoverable as rent, and interest shall not be payable on any instalment in respect of which default has not been made.

(15) Any order made under this section shall be subject to appeal in the manner provided in section 115C unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

180B. Lands in respect of which a uniform annual money rent has been fixed under section 180A, to cease to be utbandi lands.—Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as utbandi lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy-raiyat from the date of the order.

180C. Period for which rent fixed under section 180A to remain unaltered.—(1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (12) of section 180A.

Note.—Sections 180A-180C provided means whereby a uniform annual money rent could be determined for land held under the custom of utbandi by a settled raiyat of a village and to convert the tenant into an occupancy-raiyat from the date of the order, irrespective of the period of his possession of the utbandi land.

These sections were extended only to the district of Nadia, Murshidabad and Jessore.

181. Saving as to service-tenures.—Nothing in this Act shall affect any incident of a ghatwali[1] or other servicetenure, or in particular, shall confer a right to transfer or bequeath a

1. See author's Land Laws in East Pakistan, vol.1, p.19

service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

182. Homesteads.—When a raiyat or an under-raiyat holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a raiyat or an under-raiyat according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to raiyats or under-raiyats, as the case may be.

Note.—This section was enacted for the protection of the cultivating tenant, so that he could not be turned out of his homestead. [2]It contained two parts and laid down (a) that the status of the tenant in respect of his homestead should be that of a raiyat or an under-raiyat according to the status of the landlord and (b) that the provisions of the Bengal Tenancy Act would also apply to the homestead land.

Where a homestead was held by a raiyat or an underraiyat as part of his agricultural holding, it was not necessary nor permissible to refer to this section.[3]In such a case there was only one tenancy and his rights in the homestead were the same as in the agricultural lands.[4]

This section applied to the homestead of a person who was a raiyat or an under-raiyat although he was not a raiyat or an under-raiyat of the village in which the homestead was situated and was not a raiyat or an under-raiyat of the same landlord as the landlord of the homestead.[5]

Where the homestead was held by a tenant who held no agricultural land, but the homestead formed part of an agricultural tenancy held by the raiyat from whom the tenant had taken sub-lease of the homestead portion only, the tenant

2. Pulin v. Bakhar (1936) 40 C. W. N. 599.
3. Rahimuddi v. Amina (1925) 43 C. L. J. 132; Chandra v. Meherjan (1926) 44 C. L. J. 311.
4. Pulin v. Bakhar, Supra.
5. Harihar v. Dinu (1911) 16 C. W. N. 536 at 539.

became an under-raiyat under the general provisions of the Act, apart from section 182.[6]

183 Saving of custom.—Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

CHAPTER –XVI

Limitation

184. Limitation in suits, appeals and applications in Schedule III.—(1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so provided shall be dismissed although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

185. Portions of the limitation Act not applicable to such suits, etc., mentioned in Schedule III.—Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Limitation act, 1908 shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act.

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6. Arun v. Durgacharan (1941) 45 C. W. N. 805.

CHAPTER -XVII

Supplemental.

Penalties.

186. Penalties for illegal interference with produce.—(1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force, —

(a) distrains or attempts to distrain the produce of a tenant's holding, or

(b) (This clause was omitted by the Act of 1928)

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding.

he shall be deemed to have committed criminal trespass within the meaning of the Penal Code.

(2) Any person who abets, within the meaning of the Penal Code, the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Damages for denial of landlord's title.

186A. Damages for denial of landlord's title.—(1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant, and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, in any of the modes in which a decree for rent may be executed.

Denial of landlord's title—how far a ground for ejectment. —*Under the Bengal Tenancy Act, 1885, no tenant could be ejected except in execution of a decree and upon the grounds provided for in the Act.*[1]The section providing the grounds upon which a landlord could eject a tenant are sections 10, 18, 25, 44, 48C and 66. Denial of landlord's title is no ground of ejectment under any of the provisions of the aforesaid sections. So a tenant denying his landlord's title was not liable to ejectment under this Act.[2]The rule, that a denial of the relationship of landlord and tenant did not operate as forfeiture, did not apply, where the denial was given effect to by a decree of the Court and the tenant was estopped as a matter of record to set up a tenancy in the ejectment suit.[3] here a tenant denied the title of his landlord in a suit for rent and the rent suit being dismissed, the landlord brought a suit for khas-possession, he was entitled to succeed inasmuch as the question as to the relationship of landlord and tenant was barred by the rule of res judicata and the defendant could not assert his title as tenant in such suit.[4] Where a suit for rent was dismissed on the denial by the tenant of the landlòrd's title and on appeal by the landlord, the suit was withdrawn by him with liberty to bring a fresh suit, held, in a subsequent suit by the landlord for khas-possession that the only decree that could be relied on was a decree which had ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant would not work any forfeiture, as it was not given

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1. Sec. 89
2. Debiruddin v. Abdur Rahim (1888) I. L. R. 17 Cal. 196; followed in Dhora v. Ram (1890) I. L. R. 20 Cal. 101; Sheikh Nizamuddin v. Momtajuddin (1900) 5 C. W. N. 263 at 264; Chandra v. Bissesswar (1892) I C. W. N. 158; Jnanendra v. Jogendra (1925) 91 I. C. 191.
3. Nilmadhab v. Anantaram (1898) 2 C. W. N. 755; Foyi v. Aftabuddin (1902) 6 C. W. N. 575; Haranath v. Kamini (1906) 3 C. L. J. 25 n; Ramgati v. Pran Hari (1905) 3 C. L. J. 201; Khater v. Sadruddi (1907) I. L. R. 34 Cal. 922; Sheikh Miadhar v. Rajani (1909) 14 C. W. N. 339.
4. Nilmadhab v. Anantaram (1898) 2 C. W. N. 755.

effect to by a decree of the Court.[5] A mere renunciation of a tenancy without denial of the landlord's title, though it might operate as a surrender, could not amount to a disclaimer.[6] There was no disclaimer when the tenant put the landlord to the proof of his alleged title by purchase, nor when the tenant merely questioned the extent of the landlord's interest and his title to receive the entire rent.[7] So also where a tenant did not deny the whole title of his landlord but set up the right of third party as a co-sharer, there could be no forfeiture.[8] A co-sharer tenant representing a tenancy in the books of the landlord was entitled to bind his co-sharers for the purposes of the tenancy, but when he repudiated the tenancy he must be taken to have acted beyond the scope of his authority; consequently his disclaimer could not bind his co-sharers.[9] The denial of liability to pay rent on the ground of not having obtained possession could be treated as a repudiation or rescission of the lease.[10]

Under section 186A of the Bengal Tenancy Act introduced by the Amending Acts of 1907 and 1908, a tenant who renounced his character as a tenant of the landlord by setting up, without reasonable or probable cause, title in a third person or himself, was liable to have a decree for the damage passed against him.

[For detailed study, sec author's "The Bengal Raiyats, Chapter 8, section 2(7)].

Agents and representatives of landlords.

187. Power for landlord to act through agent.—(1) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except in instrument appointing or authorising an agent may be signed or certified by an agent of the landlord authorised in writing in that behalf.

188. Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.—(1) Subject to the provisions of section 148A where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together or by an agent authorised to act on behalf of both or all of them :

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-section (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

(i) ...... (This clause was omitted by the Act of 1938),

(ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,

(iii) bring a suit for ejectment of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (b), or clause (c) of section 44, or in accordance with the provisions of section 48C,

(iv) make applications as regards improvements under sections 78, 80 and 81,

(v) apply for measurement under sections 90 and 91,

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5. Pyari v. Hem (1912) 16 C. W. N. 730.
6. Protab v. Biraj. A. I. R. 1914 Cal. 51.
7. Sreemati Mallikadasi v. Makham (1905) 9 C. W. N. 928.
8. Neamatullah v. Bajiulla (1914) 26 I. C. 619.
9. Birendra v. Bhupaneswari (1912) I. L. R. 39 Cal. 903 at 905; Jharu v. Mahatabuddin A. I. R. 1928 Cal. 713.
10. Hara v. Jogendra (1904) 9 C. W. N. 387.

(vi) file an application under section 105,
(vii) bring a suit under section 106,
(viii) apply for record of private lands under section 118,
(ix) apply for the determination of the incidents of a tenancy under section 158,
(x) apply to the Collector for a declaration under sub-section (3) of section 180.

(2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed or order made on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be :

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the cosharer landlords of the tenancy in porportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with co-sharer plaintiff or applicant.

188A. Repealed by the Act of 1928.

Rules under Act.

189. Power to make rules regarding procedure, powers of officers and services of notices. — The Provincial Government may, from time to time, by notification in the Official Gazette, make rules, consistent with this Act. —

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of soil; and

(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is provided in this or any other ;

(3)....... (This clause was omitted by the Act of 1947);

(4) to prescribe the authority by whom the fees, deposited under sections 12, 13, 15, 17 and 18 may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with; and

(5) to provide for all or any of the following matters, namely :—

(a) the manner of publication of —
(i) notifications under sub-section (3) of section 1;
(ii) price lists under sub-section (3) of section 39;
(iii) notice under sub-section (2) of section 87;
(iv) the draft record-of-rights under sub section (1) of section 103A;
(v) the record-of-rights under sub-section (2) of section 103A;
(vi) Tables of Rates under sub-section (2) of section 104B;
(vii) the draft Settlement Rent-roll under sub-section (1) of section 104E;
(viii) proclamation under clause (d) of sub- section (3) of section 163; and
(ix) the rules made by authorities other than the Provincial Government or the High Court under sub-section (2) of section 190;

(b) . . . (This sub-clause was omitted by the Act of 1947);

(c) the amount of fees —

(i) for processes referred to in sub-section (2) of section 12, in sub-sections (1), (2), (3), (4) and (5) of section 26C, in sub-section (6) of section 26G, in sub-section (2) of section 85A and in sub-section (2) of section 88;

(ii) for service of notice referred to in sub-section (1) of section 13; and

(iii) referred to in sub-section (2) of section 61 and in sub-section (6) of section 88;

(cc) the manner of filing of the notices referred to in sub-section (2) of section 12, in sub-section (1) of section 13, and in sub-sections (1), (2), (3) and (4) of section 26C;

(d) the amount of the cost of transmission of fees or other monies;

(e) the manner of payment or tender of rent by postal money-order;

(f) the manner of verification of applications under sub-section (2) of section 80;

(g) the information to be contained in the applications referred to in sub-section (2) of section 80;

(h) the form of the register referred to in clause (a) of sub-section (2) of section 99A and the particulars to be therein entered;

(i) the manner of making a survey and preparing a record-of-rights under sub-section (4) of section 101;

(j) the particulars referred to in the proviso to clause (j) of section 102;

(k) the period of publication of the draft record-of-rights under sub-section (1) of section 103A and of the draft Settlement Rent-roll under sub-section (1) of section 104E;

(l) the manner in which objections shall be considered and disposed of under sub-section (2) of section 103A;

(m) the empowering of the "confirming authority" referred to in sub-section (4) of section 104B;

(n) the superior Revenue authority referred to in section 104G;

(o) the stamp to be borne by applications under sub-section (1) or sub-section (2) of section 105;

(p) . . . . (This sub-clause was omitted by the Act of 1938);

(q) any other matter required or permitted under this Act to be prescribed.

190. Procedure for making publication and confirmation of rules.—(1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of person likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Provincial Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner;

Provided that every such draft shall be published in the Official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the Official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily settled districts.

191. Settlement of rent of land held in a district not permanently settled.—Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when,

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or at a particular rent, unless in the case of a fresh settlement made under clause (b) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by the Provincial Government to make difinitively or confirm settlements, and the Revenue-officer may, notwithstanding anything in the contract between the parties by order, on the application of the land-lord or of the tenant, or of his own motion, fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180 :

Provided that, notwithstanding anything contained in sub-section (3) of section 7 he may divide the minimum profit of ten per centum provided for in that sub-section among two or more grades of tenure-holders if such exists.

192. Amalgamated with section 191 by the Act of 1928.

Rights of pasturage, etc.

193. Rights of pasturage, forest-rights, etc.—The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverbale in respect of any rights of pasturage, forest-right, rights over fisheries and the like.

Saving for conditions binding on landlords.

194. Tenant not enabled by Act in violate conditions binding on landlord.—Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition :

Provided that this section shall not apply to a raiyat or an under-raiyat doing any act in exercise of the rights conferred by this Act upon raiyats or under-raiyats, as the case may be.

Savings for special enactments.

195. Savings for special enactments.—Nothing in this Act shall affect —

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act ;

(b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;

(c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(d) any enactment relating to the partition of revenuepaying estates;

(e) any enactment relating to patni-tenures in so far as it relates to those tenures, except that —

(i) the provisions of section 67 and of clause (1) of sub-section (1) of section 178 shall apply to all patni-tenures, and

(ii) the expression "khudkast raiyat or resident and hereditary cultivator" in sub-section (3) of section 11 of the Bengal Patni Taluks Regulation, 1819, shall be deemed to include all raiyats having a right of occupancy; or

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Protection for certain acts.

195A. Protection in certain cases for acts done. — No suit or other proceeding shall be instituted against the Crown or against any officer of the Crown in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee :

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector of the Court.

196. Repealed by Act of 1928.

SCHEDULE 1

(See section 2)

Repeal of Enactments.

Regulations of the Bengal Code

Number and year	Subject of Regulation	Extent of repeal
8 of 1793	A regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the public revenue payable from the lands of the *zemindars*, independent *talukders* and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those provinces, respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
12 of 1805	A regulation for the settlement and collection of the public revenue in the *zila* of Cuttack, including the *parganas* of Pataspur, Kamardachor and Bhograi, at present included in the *zila* of Midnapore.	Section 7.
5 of 1812	A regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26 and 27.
18 of 1812	A regulation for explaining section 2, Regulation 5, 1812, and rescinding sections 3 and 4, Regulation 44, 1793, and sections 3 and 4, Regulation 50, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
11 of 1825	A regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nor if annexed to a subordinate tenure" to the end of the clause.

Number and year	Subject of Regulation	Extent of repeal
	Acts of the Bengal Council	
6 of 1862	An Act to amend Act 10 of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
4 of 1867	An Act to explain and amend Act 6 of 1862. passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgements.	The whole Act.
8 of 1869	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
8 of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.
	Act of the Governor General in Council.	
10 of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II

Particulars of receipt and of statement of Account.

(*See sections 56 and 57*)

Particulars number of receipt (landlord's portion.)	Particulars of receipt (tenant's portion.)
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, *pargana*, thana.	2. Name of village, *pargana*, thana.
3. (a) Name of the estate and *tauzi* number to which the land appertains, and	3. (a) Name of the estate and *tauzi* number to which the land appertains, and

Particulars number of receipt (landlord's portion.)	Particulars of receipt (tenant's portion.)
(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the land-lord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—	6. Particulars of the tenure or holding for which rent is paid, —
(a) Serial number of the land-lords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.	(a) Serial number of the land-lords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
(b) Area	(b) Area.
(c) Annual rent (cash or fixed quantity of produce or both as the case may be)	(c) Annual rent (cash or fixed quantity of produce or both as the case may be.)
(d) Annual road and public works cesses.	(d) Annual road and public works cesses.
(e) *Jalkar, bankar and phalkar,*	(e) *Jalkar, bankar and phalkar.*
7. Amount paid specifying for which of the items (c), (d) and (e) and for which year and *kist.*	7. Amount paid specifying for which of the items (c), (d) and (e) and for which year and *kist.*
8. Date of payment.	8. Date of payment.
9. Signature of landlord or his authorised agent.	9. Signature of landlord or his authorised agent.

SCHEDULE II

Particulars of receipt and of statement of account.

Particulars of statement of account. (Landlord's portion)	Particulars of statement of account. (Tenant's portion)
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, *pargana*, thana.	2. Name of village, *pargana*, thana.
3. (a) Name of the estate and *tauzi* number to which the land appertains, and	3. (a) Name of the estate and *tauzi* number to which the land appertains, and
(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of landlords.	(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the land-lord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—	6. Particulars of the tenure or holding for which rent is paid,—
(a) Serial number of the land-lords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.	(a) Serial number of the land-lords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
(b) Area.	(b) Area.
(c) Annual rent (cash or fixed quantity of produce or both as the case may be.)	(c) Annual rent (cash or fixed quantity of produce or both, as the case may be.)
(d) Annual road and public works cesses.	(d) Annual road and public works cesses.
(e) *Jalkar, bankar and phalkar.*	(e) *Jalkar, bankar and phalkar.*
7. Amounts due at the beginning of the year :—	7. Amounts due at the begin-ning of the year :—

Particulars of statement of account. (Landlord's portion)	Particulars of statement of account. (Tenant's portion)
(a) under each of the items (c), (d) and (e) and for which years; and	(a) under each of the items (c) (d) and (e) and for which years; and
(b) as interest on above.	(b) as interest on above.
8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.	8. Amounts paid during the years agaisnt each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.	9. Amounts remaining due at the end of the year.
10. Date of the statement of account.	10. Date of the statement of account.
11. Signature of landlord or his authorised agent.	11. Signature of landlord or his authorised agent.

SCHEDULE III

Limitation

(See Section 184)

Part 1.— Suits.

Description of suit	Period of limitation	Time from which period begins to run
1. To eject any tenureholder, *raiyat* or under-*raiyat* on account of any breach of a condition in respect of which there is a contract expressly provid-ing that ejectment shall be the penalty of such breach.	One year.	The date of the breach.

Description of suit	Period of limitation	Time from which period begins to run
1. (a) To eject a non-occupancy-*raiyat* or under-*raiyat* on the ground of the expiration of the term of his lease.	Six months	The expiration of the term.
2. For the recovery of an arrear of rent in a suit brought by—		
(i) a sole landlord,		
(ii) the entire body of land-lords, or		
(iii) one or more co-sharer landlords—		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same tenure or holding.	six months.	The date of service of notice of the deposit or presentation of the postal money-under, as the case may be.
(b) in other cases.	Three years.	The last day of the agricultural year in which the arrear fell due.
3. To recover possession of land claimed by the plaintiff as a *raiyat* or an under-*raiyat*.	Two years.	The date of dispossession.

Part II. —*Appeals*

Description of appeal.	Period of limitation	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days.	The date of the decree or order appealed against.

Description of appeal.	Period of limitation	Time from which period begins to run.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days.	The date of the order appealed against.
6. For the execution of a decree or order made in a suit between landlord and tenant to whom the provisions of this Act are applicable, and not being a decree for a sum of money exceeding Rs.500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgement debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Limitation Act, 1908: Provided that, where a sale in execution of arr ears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the dateof the order setting it aside shall be excluded from the period of limitation provided by this Article.	Three years	(1) the date of the decree or order: or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been review of judgement, the date of the decision passed on the review.

IMPORTANT QUESTIONS

INTRODUCTION

1. What was the effect, immediate or otherwise, of the provisions of Regulations I & VIII of 1793, upon the relation between the *zemindars* and the *raiyats?*

2. What was the chief defect of the Settlement Regulations? What consequences followed therefrom and what attempts were made to remedy this defect.

3. Write a short note on the subsequent legislation for the protection of the *raiyats* foreshadowed in Art. VII, Cl. I of Reg. I of 1793.

4. What are the circumstances that led to the passing of the Bengal Tenancy Act, 1885.

CHAPTER –I

5. What is the object of the passing of the Bengal Tenancy Act, 1885. Is it an exhaustive and a complete code in itself? Illustrate your answer.

6. Define the following terms :

Complete usufructuary mortgage, estate, holding, landlord, rent, tenant, tenure, tenure-holder, *raiyat, mukarrari, istimrari*, improvement, permánent tenure.

CHAPTER –II

7. What are the different classes of tenants recognised under the Bengla Tenancy Act? Distinguish between a tenureholder and a *raiyat.*

8. When the origin of the tenancy is not known, how would you determine whether a tenant is a tenure-holder or a *raiyat?*

9. Tenure-holders and *raiyats* are both tenants. What tests would you apply to distinguish the one from the other?

10. State what is meant by "tenant" in the Bengal Tenancy Act. Is a person who holds land under a rent-free grant from the *zemindar* a tenant?

11. Under what circumstances is a person who cultivates land under the system of *'adhi', 'barga'* or *'bhag'*, a tenant?

12. A person takes a lease of 110 *bighas* of land for the purpose of cultivating it by himself. He, however, brings it under cultivation by establishing tenants on it. Is he a tenureholder or a *raiyat?*

CHAPTER –III

13. Compare the rights of a permanent tenure-holder with those of an occupancy-*raiyat.*

14. When can the rent of a tenure be enhanced and subject to what limitations?

15. What are the incidents of tenures existing at the time of the Permanent Settlement?

16. Is a denial of landlord's title a ground for ejecting a tenant under the Bengal Tenancy Act? In a suit for rent the tenant denies the landlord's title and the suit is dismissed. The landlord subsequently brings a suit for ejectment and in that suit the tenant pleads tenancy. Is the landlord entitled to succeed?

CHAPTER –IV

17. What are the rights attached to the holding of a *raiyat* who holds at a rent or rate of rent fixed in perpetuity.

18. Compare the status of an occupancy-*raiyat* with that of a *raiyat* at fixed rates.

19. Can a *raiyat* at fixed rate ever be an occupancy-*raiyat?*

CHAPTER –V

20. Give a short historical review of the right known as the occupancy right and its incidents from the day of the Permanent Settlement till the present time.

21. What is a right of occupancy? How is it acquired? Who can acquire this right? In what land occupancy right is acquired?

22. Discuss the varioius modes of acquisition of occupancy rights. Whether a *raiyat* who has cultivated under a proprietor's *nij jote* lands for 15 years continuously can claim occupancy rights therein? In what circumstances an under*raiyat* is deemed to have a right of occupancy?

23. How can an occupancy right be acquired by a *raiyat* and an under-*raiyat*? In what respects are their rights identical and where do they differ?

24. Define a "settled *raiyat*." How is the status of a settled *raiyat* acquired? Is it transferable? Has a settled *raiyat* right of occupancy in all kinds of lands held by him in the village for less than 12 years?

25. When does a "settled *raiyat*" acquire a right of occupancy in any land in his village? Are there any exceptions to this rule?

26. Discuss if occupancy right can be acquired (a) under a trespasser, (b) by a trespasser, (c) in a proprietor's private land, (d) in the homestead land of a *raiyat* and (e) by an under*raiyat*.

27. What are the rights of a settled *raiyat*?

28. What is the distinction between a settled *raiyat* and an occupancy-*raiyat*?

29. "All settled raiyats are occupancy-*raiyats* but all occupancy-*raiyats* may not be settled *raiyats*." Discuss.

30. What interest does a co-sharer landlord acquire when he purchases an occupancy holding?

31. To what extent has the doctrine of merger been adopted in the Bengal Tenancy Act? State the particulars.

32. "A person cannot be, at the same time, both landlord and tenant of the same premises." Explain fully to what extent this principle has been recognised in the Bengal Tenancy Act.

33. What is the effect of acquisition of the right of an occupancy-*raiyat* by the landlord?

A is an occupancy-*raiyat* ; subsequently he acquires the right of holding it as a temporary tenure-holder. How far is his former right affected thereby?

34. Can a co sharer landlord acquire occupancy right in any *raiyat* holding on his own property which he acquires in any way other than at a rent sale?

35. Describe the incidents of an occupancy right.

36. Discuss the incidents of an occupancy-*raiyat* (i) to cut trees in his holding and (ii) to the trees if they are cut down.

37. What were the restrictions on the right of user of a holding by an occupancy-*raiyat*? What changes have been made by the Amending Act of 1949?

38. An occupancy-*raiyat* entered into possession of his holding after the passing of the Bengal Tenancy Act under a contract that he would cultivate indigo on his land on failure of which he would be liable to be ejected. Can the landlord eject him on his refusal to cultivate indigo?

39. What is the law in regard to devolution of right of occupancy?

40. Write a short note on the origin and development of the right of transfer of a holding of an occupancy-*raiyat* under the Bengal Tenancy Act.

41. "The conferment of the right of transferability on the occupancy-*raiyat* by the Bengal Tenancy Act, 1928 has really been an infringement by the legislature of the absolute proprietary right. conferred on the *zemindars* by the Permanent Settlement of 1793." Discuss.

42. When is a co-sharer of an occupancy holding entitled to exercise his right of pre-emption in respect of a portion or share transferred? Does the right arise when the transfer is made to another co-sharer jointly with a stranger? Give reasons.

43. Discuss the right of pre-emption conferred upon a cosharer of an occupancy holding under section 26F of the Bengal Tenancy Act. Within what time can a co-sharer file his application for pre-emption if notice of the transfer be not given to him?

44. What is the procedure laid down in the Bengal Tenancy Act for exercise of the right of pre-emption? Who can exercise this right?

45. When a co-sharer tenant cannot exercise the right of pre-emption?

46. Describe the incidents of the holding of an occupancyraiyat on the following heads :—

(a) Use of land including trees.

(b) Transfer

(c) Ejectment

(d) Enhancement

47. What limitations have been imposed by the Bengal Tenancy Act on the rights of an occupancy-*raiyat* in the matter of creating mortgages on his holding? Show that such limitations are for the benefit of the *raiyat* and that the *raiyat* cannot throw off this benefit at his option.

48. Is a mortgage of an occupancy *raiyati* holding by conditional sale with possession to the mortgagee extinguished automatically, on the expiry of the period mentioned in the instrument or of 15 years whichever is less under section 26G of the Bengal Tenancy Act?

49. What is the legal effect of the following transactions :–

(a) An occupancy-*raiyat* enters into a complete usufructuary mortgage of a portion of his holding for 20 years.

(b) A stipulation by a *raiyat* not to acquire an occupancy right in land.

50. What are the conditions on which money rent of an occupancy-*raiyat* may be enhanced by suit or by contract.

51. An occupancy-*rayat* agrees by a registered contract to pay an increase of rent by more than 2 annas in the rupee. Is the agreement wholly void or valid to the extent of 2 annas in the rupee?

52. An occupancy-*raiyat* holds his land at a rent of Rs.32 a year. He entered into a contract with his landlord to pay an enhanced rent of Rs.50 a year. The contract is not in writing but the tenant paid rent at the enhanced rate continuously for more than 3 years and then refused to pay at that rate. At what rate is the landlord entitled to recover rent?

53. A, a landlord, sued B, his occupancy-*raiyat*, for enhancement of rent which has not been enhanced for the last 25 years, on the ground of rise in the price of staple food crops and it is found on comparison of the price lists that A is entitled to an enhancement of 8 annas per rupee. To what extent can the Court interfere as regards the amount of enhancement and as regards the period for which it is to take effect?

54. What are the grounds upon which an occupancy-*raiyat* holding at a money rent may sue for reduction of his rent?

CHAPTER –VI

55. What are the incidents attached to a non-occupancy holding?

56. Discuss whether a non-occupancy *raiyat* holding heritable?

57. In what way and how far the rent of a non-occupancy *raiyat* may be enhanced?

58. What are the grounds on which a non-occupancy *raiyat* may be ejected?

59. A non-occupancy *raiyat* denies his landlord's title. Can he be ejected on this ground? If not, on what grounds can he be ejected?

60. What condition must be satisfied before a landlord is entitled to institute a suit for ejectment against a non-occupancy *raiyat* for refusing to pay enhanced rent?

CHAPTER –VII

61. In what way can the rent of an under-*raiyat* be enhanced?

62. To what limit may the rent of an under-*raiyat be* enhanced? If the rent of an under-*raiyat* is enhanced exceeding the limit as provided by the Bengal Tenancy Act, is the agreement wholly void or is it valid upto the extent of the limit provided for by the Act?

63. On what grounds and with what limitations the money rent of an under-*raiyat* may be enhanced by contract and by suit?

64. Under what circumstances can an under-*raiyat* be ejected by his landlord?

65. Discuss whether the holding of an under-*raiyat* is heritable and transferable?

66. What is the position of an under-*raiyat* under the Bengal Tenancy Act?

67. Discuss if occupancy right can be acquired by an under-*raiyat*?

68. State the circumstances under which an under-*raiyat* may claim that he is not liable to ejectment on the ground that his term of lease has expired.

CHAPTER –VIII

69. Write a short thesis on the "presumption of fixity of rent" under the provisions of the Bengal Tenancy Act.

70. A landlord brings two suits for enhancement of rent. Defendant proves uniform payment of rent since 1780 in one case and since 1800 in the other. The landlord proves that the land in the second case was the bed of a river before 1800. Are the rents enhanceable? Give reasons.

71. State and illustrate the rule as to the fixity of rent as laid down in section 50 of the Bengal Tenancy Act, and describe the circumstances under which the presumption laid down in that Act arises. Explain and illustrate as to how that presumption can be rebutted.

72. Discuss the rules and presumptions as to fixity of rent regarding tenures or *raiyati* holdings as embodied in section 50 of the Bengal Tenancy Act. Support your answer by an example.

73. A tenure is divided and the different parts into which the tenure is divided are held at a proportionate rent, the aggregate rent being equal to the original rent. Is the tenureholder entitled to the benefit of the presumption under section 50, Cl. (2) of the Bengal Tenancy Act?

74. In order to prove that a tenant has been holding at a uniform rate of rent for 20 years, is it necessary for the tenant to prove actual payment of rent for all these years?

75. It was established in a particular case that rent had been paid at the rate alleged by the tenant during the years, 1891 to 1895 as also during the years 1905 to 1911. Does the presumption under section 50, clause (2) of the Bengal Tenancy Act regarding uniform rate of rent arise? Discuss.

76. B, an occupancy *raiyat* holds a holding under A. A brings a suit for enhancement of rent on the ground of a rise in the prices of staple food crops. B shows from the *dakhilas* that he has been paying rent at the rate of Rs. 50 per annum for 20 years immediately before the institution of the suit. A shows that 50 years before the suit, the holding was created by amalgamation of two holdings paying rent at the rate of Rs. 24.8 annas per annum and the rent was then fixed at Rs. 50. How would you decide the suit? Give reasons for your decision.

77. State what the main requirements are in a claim for additional rent from a tenant for additional area; and also how such additional rent should be determined in the case of a *raiyat* and a tenure-holder.

78. State the circumstances which a landlord must prove in order to get a decree for rent to be determined in the case of a tenure-holder and a *raiyat*.

79. Give a summary of the law as laid down in the Bengal Tenancy Act which entitles the landlord to additional rent for alteration of the area of the tenancy.

80. A tenant T is in occupation of a tenure which was measured previously as 40 bighas at a rental of Rs. 80 per annum. In the cadastral survey settlement in the said locality, the tenancy was recorded as 50 bighas in the area. It was also found that areas of other tenures in the vicinity settled at or about the same time showed an increase in area by $12\frac{1}{2}$ p.c. The landlord brings a suit for enhancement of rent claiming rent at Rs.100 per annum. Discuss whether he is entitled to any enhancement of rent and, if so, how much?

81. Explain clearly the law laid down in section 52 of the Bengal Tenancy Act as to alteration of rent on the ground of alteration in area. Does the section apply to *mukarrari* tenures or holdings?

82. A suit is brought by a landlord against a tenant for rent of an excess area. What facts must be proved inorder that the landlord may succeed?

83. What remedies are open to a tenant in case the landlord has dispossessed the tenant of a portion of the holding? What will the tenant have to prove in the case?

84. Discuss by reference to leading cases how far a tenant can claim suspension of rent on account of dispossession by the landlord.

85. What remedies are open to a tenant in case the soil of the holding has permanently deteriorated? What should he prove in this case?

86. In what Court and in what circumstances can a tenant deposit rent to prevent the running of interest? Can a transferee of a non-transferable holding make a valid deposit of rent in Court on his own behalf?

87. Under what circumstances can a tenant deposit rent in a Civil Court? Illustrate the procedure for such deposit.

88. What are the essentials of a valid deposit?

89. On refusal to accept rent by the landlord, a tenant remitted the same by money-order, *kist* by *kist*, which was not accepted. Discuss whether the tenant is liable to pay interest when it was proved that he did not deposit the rent in Court.

90. What are the conditions under which a valid deposit of rent can be made in Court? Who can make the deposit? Is it necessary that the person making the deposit must be the registered tenant?

91. What would be the effect of a receipt granted by the Court on a deposit having been made where he amount of rent payable in disputed and it is found subsequently that the amount deposited falls short of the full amount due?

92. What is the landlord's remedy in case of default of payment of rent of a tenant?

93. "Section 65 of the Bengal Tenancy Act secures the position of the landlords by making the rent a first charge on the tenures or holdings of the tenants," Explain.

94. "Rent is a first charge on the holding or tenure." Discuss with reference to a leading case.

95. Discuss whether a purchaser at a rent sale has priority over a purchaser in execution of a mortgage decree.

96. B, a landlord, obtains a decree for arrears of rent against C in 1945, and in execution thereof puts the tenancy to sale, but the sale proceeds are not sufficient to satisfy the dues under the decree. Discuss the rights of the landlord against the tenant to recover the balance of decretal dues, under the Bengal Tenancy Act.

97. A is the owner of a *paint*. B holds a *jama* of certain lands within the *patni* under A. A brings a suit for rent against B and obtains a decree. Next year the *patni* is sold under the *patni* Regulation and purchased by C. Thereafter A executes his decree and prays for the sale of the holding of B. Can he do so?

98. A obtained a decree for arrears of rent in respect of a tenure against B. Subsequently he sold his landlord's interest to C and then applied for execution of the rent decree and the defaulting tenure was attached. Discuss whether he is entitled to bring the tenure to sale in execution of his rent decree inspite of his having ceased to be the landlord at the time.

99. A landlord after he has sold his property sues for back rents and obtains a decree. Can he execute the decree by sale of the tenure?

100. A *zemindar* having parted with all his interest in the *zemindari* brought a suit for arrears of rent against the tenant and obtains a decree. Discuss with reference to leading cases whether it is a rent decree within the meaning of the Bengal Tenancy Act and whether it can be executed as such.

101. "The right to enforce a decree for arrears of rent as a rent decree, subsists only so long as the relationship of landlord and tenant subsists." Discuss this proposition with reference to judicial decisions.

102. What is the distinction between a rent decree and a money decree?

103. Discuss the respective rights acquired by a purchaser at a sale in execution of a rent decree and a money decree.

104. X, a tenant under the Bengal Tenancy Act, died leaving Y and Z, as heirs. Y got his name registered in the *sherista* of the landlord. The landlord sued for arrears of rent and sold the land in execution of his decree and it is purchased by A. Can Z maintain his possession Against A?

105. What conditions must be satisfied so that a decree for arrears of rent may have the effect of a rent decree under section 65 of the Bengal Tenancy Act. Give illustrations in support of yo[illegible] swer.

106. Can a landlord bring one suit for the total rent of two or more separate holdings? If so, what is the effect of a decree in such a suit?

107. A tenant mortgaged his holding to B which is sold in execution of a decree obtained by a co-sharer landlord for his share of the rent. Can the purchaser annul the mortgage in favour of B? Give reasons for your answer.

108. In rent a first charge on the tenure of a non-permanent tenure holder or on the holding of a non-occupancy *raiyat* or of an under-*raiyat*? Can such a tenure or holding be subjected to a rent sale with right to the auction purchaser to annul the incumbrances thereon? Support your answer with reasons and by examples.

109. What rate of interest is prescribed in the Bengal Tenancy Act for arrears of rent?

110. State whether the following provisions to be found in a *mukarrari* lease of 1890 are valid or not :—

(a) All arrears of rent shall carry interest at 75 per cent a year.

(b) On non-payment of rent, the tenancy shall be forfeited.

111. In 1883, A executed a lease in favour of his landlord agreeing to pay rent for his holding by monthly instalments. In 1889 the holding was sold and purchased by B. The landlord sues B for rent claiming interest on monthly instalments. Is he entitled to succeed? Discuss.

112. In a permanent *mukarrari* lease, granted by the holder of permanent tenure sometimes in 1920 there was a reservation of a high rate of interest at 75 per cent per annum on all arrears of rent. Can the stipulation be enforced against the lessee? Discuss.

113. A *patnidar* stipulates to pay interest at the rate of 24 p.c. on arrears of rent. How far is this stipulation valid or invalid under the Bengal Tenancy Act?

114. When can a Court award damages to a defendant in a suit for recovery of arrears of rent and to what extent?

115. What is an *abwab*? Is an *abwab* recoverable from a tenant under the Bengal Tenancy Act?

116. Trace the history of *abwab* from Mahomedan times and state what change was introduced in this respect by the Decennial Settlement.

117. A proprietor grants a *mukarrari* lease. Can the provision as to *abwab* be contravened?

118. Explain and illustrate the nature of *abwab*. Can a landlord legally recover an *abwab* which is proved to have been paid for a great many years according to the custom of the estate of which the lands form part?

119. A, the owner of a permanently settled estate, has let out 15 bighas of agricultural land to B by a *mouraski mukarrari patta* dated 6th September, 1879 at a rental of Rs. 15 per year plus Rs. 5 as price of *ghee* and goat to be supplied at *puja* time every year. Is the price of *ghee* and goat an *abwab*? Can A recover it by suit? Discuss.

CHAPTER –IX

120. What are presumed as "improvements" with reference to a holding?

121. State the restrictions on the right of user of his holding by an occupancy *raiyat*. Can an occupancy *raiyat* erect a pucca dwelling house on the whole of his holding?

122. What rights are acquired by an under-*raiyat* under Act IV of 1928, in case his landlord abandons or surrenders the holding?

123. What do you mean by "abandonment" within the meaning of section 87 of the Bengal Tenancy Act?

124. Distinguish between surrender and abandonment.

125. A, an occupancy-*raiyat* under B, sells a part of his holding to C and then surrenders the entire holding in favour of the landlord B. B brings a suit to eject C. discuss the rights of the parties.

126. Can a *patnidar* surrender his *patni*?

127. What are the provisions for sub-dividing a tenancy?

CHAPTER–X

128. What particulars are to be recorded in the record-of-rights?

129. What is the evidentiary value of the record-of-rights?

130. "Every entry in the record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect." How the presumption is rebutted?

131. What is the procedure for settlement of rents and preparation of settlement rent-roll under the Bengal Tenancy Act?

132. What are the presumptions as to rents settled under the Bengal Tenancy Act?

CHAPTER –XI

133. What are the rights of a tenant holding a proprietor's private lands? Can he under any circumstances acquire a right of occupancy in such land?

134. State the circumstances under which an occupancy right can or cannot be acquired by *raiyats* in holdings directly held by them under the *zemindar* in the *zemindar's nij-jote, sir* or *khamar* land within his *zemindari.*

135. What do you understand by *khamar* lands?

136. A holds a piece of *khamar* land under an *ijara* lease for a term of years. He lets it out to B who actually cultivates the land for 13 years. The lease of A then terminates. The landlord under whom A held brings a suit to turn out B. Discuss the rights of the parties to the suit.

137. What are the rules of the determination of a proprietor's private land?

CHAPTER –XIII

138. What procedure is to be followed in a rent suit for the recovery of rent by a landlord against his tenant? Can he bring successive rent suits against a *raiyat* ?

139. What particulars should be added in a plaint in a rent suit in addition to the general requirements under the Civil Procedure Code ?

140. Who are the parties in a rent suit? Who may sue and who may be sued for rent ?

141. What are the issues in a rent suit ? How far the question of title may be raised in such suit ?

142. What are the statutory disability of a landlord to recover rent ?

143. What should be the onus of proof in a rent-suit?

144. How a co-sharer landlord may sue for rent in respect of his share in a tenure or holding?

145. The Bengal Tenancy Act takes away the right of appeal in rent suits under certain circumstances. State the position in this behalf.

146. What are the rights of an ejected *raiyat* in respect of crops and land prepared for sowing?

147. What is the procedure for ejecting a tenant under the Bengal Tenancy Act ?

CHAPTER –XIV

148. Explain the distinction between a sale in execution of a money decree and a sale in execution of a rent decree. Give illustrations in support of your answer.

149. A, B and C respectively own 12 annas, 2 annas, and 2 annas of a *zemindari* and D is the *patnidar.* A brings a suit under the Bengal Tenancy Act to recover the whole rent of the tenure against D, joining B and C as co-defendants so as to enable him to bring to sale the tenure itself. Is such a suit maintainable ? Would it make any difference if the suit was brought before changes made in the Bengal Tenancy Act, in 1907 ?

150. What are the rights of a purchaser at a Court sale under rent decree?

151. What are "protected interests" as contemplated by the Bengal Tenancy Act? What are the privileges associated with such interest under the Act ?

152. A is a *raiyat* at fixed rate of rent under B, a tenure holder and has been in continuous possession for over 12 years, C purchases the tenure and serves a notice under section 167 of the Bengal Tenancy Act to annul the lease in favour of A. A claims his interest as a "protected interest" as he is a *raiyat,* though at a fixed rate and he has acquired an occupancy right. Is A liable to be ejected?

153. A purchases a tenure in execution of a rent decree under Chapter XIV of the Bengal Tenancy Act with power to avoid all incumbrances. B holds a holding in the tenure at a fixed rate of rent. Can A eject B ? If so, on what grounds ?

154. What interests are protected from annulment by a purchaser at a rent sale? How would you advise the purchaser at a rent sale to proceed when an occupancy-*raiyat* had mortgaged the holding before the sale?

155. What is meant by "a purchaser having power to annul an incumbrance" under the Bengal Tenancy Act? How is an "incumbrance" annulled under that Act ?

156. What is an incumbrance ? A, a purchaser at a rent sale, finds a trespasser B in possession of the land of the defaulting tenant. B has acquired a statutory title by 12 years possession of the land. Can A eject B ? Give reasons for your answer.

157. What is a "registered and notified incumbrance" ? Explain to what extent is it protected when there is a sale is execution of a rent decree of the tenure or holding ?

158. Give a brief summary of the procedure laid down by the Act VIII of 1885 to bring to sale a tenure or a holding. Indicate also whether non-observance of any one or more of the necessary steps required to be taken for bringing the tenancy to sale will affect the character or the validity of the sale.

159. A *zemindar* brings a suit for arrears of rent against a *raiyat* at fixed rate and in execution of his decree sells the holding at the first sale and realises less than the amount of the decree. What are the rights of the purchaser? Give reasons for your answer.

160. A, a landlord, obtain a decree for arrears of rent against B, and in execution thereof puts the tenancy to sale. The sale proceeds are not sufficient to satisfy the decretal dues. What are A's rights against B, as regards recovery of the balance ?

161. To what extent is a "registered and notified incumbrance" protected, when there is a sale in execution of a rent decree of the tenure or holding on which it is an incumbrance ?

162. When and by what procedure can registered and notified incumbrance be annulled on a sale of a holding sold for arrears of rent due thereon ?

163. When and by what procedure can a purchaser of a tenure sold for its arrears of rent, avoid incumbrances ?

164. A purchaser of a tenure at a sale for arrears of rent under the Bengal Tenancy Act which was sold with power to annul incumbrances wants your advice as to how to get rid of several grades of incumbrances created by the tenant and his sub-lesses upon the tenure. Advise him as to what stepl he should take for the purpose.

165. What is the procedure laid down in the Bengal Tenancy Act for annulling incumbrances? Can the right be exercised by one of several joint purchasers?

166. A tenure or holding has been put up to sale at the instance of the landlord in execution of the decree for rent against the tenant. Who are the persons entitled to prevent the sale from taking place by deposit of the decretal sum ?

167. What remedy is given to persons whose interests are at stake at an impending sale under Chapter XIV of the Bengal Tenancy Act ? Is the remedy exclusive, concurrent, alternative or consecutive ?

168. "When a tenure or holding is advertised for sale for an arrear of rent due thereon, any person having an interest therein voidable upon the sale may pay into Court the amount requisite to prevent the sale." Explain this statement and give illustrations. What is the meaning of the words "voidable upon the sale" ?

169. A tenure or holding is advertised for sale in execution of a rent decree ; a subordinate tenure pays into the Court the required amount and thus prevents the sale. State how the money so paid is secured to the tenant.

170. Under what circumstances can a sale held in execution of a rent-decree be set aside ? Who can apply to act aside such a sale? Can a purchaser from a judgement debtor

subsequent to a rent sale apply to set aside such a sale? Discuss.

171. Within what time and under what condition may a judgement-debtor apply to have the sale of a tenure for arrears due thereon set aside ?

172. What are the remedies of a *raiyat* whose holding has been sold in execution of a decree for arrears of rent?

173. Can a purchaser from a judgement-debtor subsequent to a rent sale apply to set aside such a sale? Discuss.

CHAPTER –XV

174. What contracts between landlords and tenants are declared to be void ?

175. Is a *raiyat* precluded from acquiring occupancy right by entering into a contract with the landlord that he would not claim such right ?

176. Has the Bengal Tenancy Act in any way affected private contracts between landlords and tenants made with their free consent ? If so, state some of the more important restrictions imposed by the Act ?

177. State how far the Bengal Tenancy Act has curtailed the freedom of contract between landlords and tenants.

178. What is the effect of the legislation in curtailing the contractual powers of the *raiyat* ? Give three concrete illustrations showing how the contractual powers have been curtailed.

179. A tenant is entitled to abatement of rent on the ground of diluvion or deficiency in area proved by measurement. Can this right be taken away by agreement to the contrary ? Discuss.

Will it make any difference if the tenant is the holder of a permanent tenure in a permanently settled area ?

180. Write notes on *'Utbandi,' 'Diara' and* 'Service tenures.'

181. Write a short note on *Ghatwali* lands, with reference to decisions of the Privy Council.

182. What are the incidents of *Chakran* lands ? State the law with regard to resumption of this class of land. Discuss this in the light of the principles laid down in the Privy Council decisions.

183. Does the Bengal Tenancy Act apply to the homestead of a *raiyat* when he holds the homestead otherwise than as part of his agricultural holding as a *raiyat* ? What is the law applicable to the incidents of his tenancy of the homestead ?

184. Discuss if the right of occupancy can be acquired in homestead land.

185. A, a co-tenant, works in a quarry belonging to both A and B. Discuss the question of liability of A for accounts and damages with reference to a leading case.

186. A tenant in common cannot be held liable to his cotenants for damages for use and occupation of the joint property, unless there has been waste or ouster of the cotenants. Explain with reference to the leading case on the subject.

INDEX

Land Laws of Bangladesh

VOL–III

1, The State Acquisition And Tenancy Act. 1950
2. The State Acquisition Rules, 1951
3. The Tenancy Rules, 1954
4. The State Acquisition (Bonds) Rules, 1957
5. Land Development Tax Ordinance, 1976
6. Land Development Tax Rules, 1976

appended. But the various forms appended to these rules have been omitted in consideration that they are unnecessary for our study. I shall consider my labour amply rewarded if the students and the lawyers find in these pages some light thrown on this difficult branch of law.

Originally this Act and the rules framed under it were known under the titles of "The East Bengal State Acquisition and Tenancy Act, 1950" and "The East Bengal State Acquisition Rules, 1951". The words "East Pakistan" have been substituted for the words "East Bengal" by the East Pakistan Repealing and Amending Ordinance, 1960 (E. P. Ordinance No. XXVIII of 1960). Inadvertently the Act and its rules are mentioned after its original names. Renders are requested to read "East Pakistan" in place of "East Bengal" wherever the words occur in this book.

The book was rushed through the press to meet the urgent demands of the students and the lawyers. Obviously a few printing mistakes have escaped the careful attention of the proof readers and certainly caused some damage to the accuracy. I offer my regrets for this inconvenience. Readers may kindly refer to the errate provided at the end of the book.

I express my sincere thanks to my publisher whose keen interest has made this publication possible.

I am particularly grateful to his Lordship Mr. Justice Syed A. B. Mahmud Husain, Judge, High Court, East Pakistan, Dhaka for sparing his valuable time to go through this book and for favour of writing a foreword to this humble work.

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I like to place on record my sincere thanks to the authorities of the Eastern Mercantile Bank Ltd., specially to Mr. Syed Shafique Ahmed, Manager, Jinnah Avenue Branch, Dhaka for giving financial support towards the publication of this book.

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L. KABIR

Dhaka
January 1, 1969.

CONTENTS

PART–1
CHAPTER —I
Preliminary

PART –II
CHAPTER –II
Special provisions for the acquisition of the interests of certain rent-receivers.

PART –III

CHAPTER –III

Special provisions regarding lands held in lieu of service.

PART –IV

CHAPTER –IV

Preparation of Record-of-rights

CHAPTER –V

Assessment of compensation and acquisition of interests of rent-receivers and of certain other interests.

CHAPTER -XI
Miscellaneous

PART -V
CHAPTER-XII
Application of this Part and class of agricultural tenants.

CHAPTER -XIII
Incidents of holdings of *raiyats*, and transfer, purchase and acquisition of lands.

CHAPTER -XIV
Provisions as to enhancement and reduction of rent.

CHAPTER– XV

Amalgamation, Sub-division and Consolidation of holdings.

CHAPTER –XVI

Provisions as to rent and realisation of rent.

CHAPTER -XVII

Maintenance and revision of the record-of-rights.

Section Page

CHAPTER—XVIIA

Land Survey Tribunal and Land Survey Appellate Tribunal

CHAPTER -XVIII

Jurisdiction, Appeal, Revision and Review.

CHAPTER —XVIIIA

Special Provisions for exemption of rent

Section Page

CHAPTER —XVIIIB

Special Provisions of Exemption of Land Revenue in Relation of Agricultural Land

CHAPTER -XIX

Rules.

Appendix

Table of Cases

CITATIONS & ABBREVIATIONS

A. I. R. — All India Reporter.
A. I. R. (Pat.) — All India Reporter, Patna Series.
B. L. R. — Bengal Law Reports.
C. L. J. — Calcutta Law Journal.
C. W. N. — Calcutta Weekly Notes.
D. L. R. — Dhaka Law Reports.
I. C. — Indian Cases.
I. L. R. (All).— Indian Law Reports, Allahabad Series.
I. L. R. (Cal). — Indian Law Reports, Calcutta Series.
M. I. A. — Moore's Indian Appeals.
P. L. R. (Dhaka) — Pakistan Law Reports, Dhaka Series.

INTRODUCTION

The East Bengal State Acquisition and Tenancy Act, 1950 has a history behind it. The Permanent Settlement of 1793 had failed in its object.[1] Millions of people, for whose happiness and well-being it was concluded, were left at the mercy of the *zemindars*. The British Administration always showed concern for the means by which the *raiyats* could be brought under direct control of Government. In the early part of the 19th century the United Kingdom Government expressed approval of a policy whereby every *zemindary* tenure should be purchased on the part of the Government and then settled with the *raiyats* on *raiyatwari* principle.[2] The Select Committee of the House of Commons that sat in 1830 suggested that Government might acquire *zemindaries* by private or public purchase, in order to protect the rights of the *raiyats*, provided that the outlay involved was not so great as to prevent the working of such a scheme.[3] But it was not possible at that time to accept that suggestion of the Committee.

In 1938 a high powered Commission was set up under the Chairmanship of Sir Francis Floud to report *inter alia* "whether it is practicable and advisable for Government to acquire all the superior interests in agricultural land so as to bring the actual cultivators into direct relation with the Government".[4] After a laborious investigation for two years into the land tenure system prevailing in Bengal from the Hindu period down to the then existing system, the majority of the Commission recorded their considered opinion that whatever might have been the justification for the Permanent Settlement in 1793. It was no longer suited to the conditions

1. See Author's "*The Rights and Liabilities of the Bengal Raiyats.*" Ch.I hereinafter referred to as "*The Bengal Raiyats.*"
2. The report of the Select Committee of the House of Commons, 1832.
3. The report of the Land Revenue Commission, Bengal, dated 21st March, 1940, Vol. I. para. 55
4. Ibid para. 10.

THE STATE ACQUISITION AND TENANCY ACT, 1950[1]

East Bengal Act XXVIII of 1951

[16th May, 1951]

An Act to provide for the acquisition by the State of the interests of rent-receivers and certain other interests in land of Bangladesh] [2] *and in define the law relating to tenancies to be held under the State after such acquisition and other matters connected therewith.*

WHEREAS it is expedient to provide for the acquisition by the State of the interests of rent-receivers and certain other interests in land of Bangladesh[2] and to define the law relating to tenancies to be held under the State after such acquisition and other matters connected therewith ;

It is hereby enacted as follows :—

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1. For Statement of Objects and Reasons, *see Dhaka Gazette, Extraordinary*, dated the 6th April, 1948 ; for Report of Select Committee, *see Dhaka Gazette, Extraordinary*, dated the 16th August, 1949, Part, IVA, page 547 ; for proceedings in Assembly, *see* the proceedings of the meetings of the East Bengal Legislative Assembly held on the 7th April, 1948, 16th to 17th, 21st to 26th, 28th to 30th November, 1st to 3rd, 5th to 10th, 12th to 13th, 15th to 17th and 19th December, 1949, 7th to 10th and 13th to 16th February, 1950.

   The Act was extended to those areas of the district of Mymensingh, which were known as "Partially Excluded Areas" immediately before the coming into force of the Constitution which was abrogated by the Presidential Proclamation of 7th October, 1958, with effect from the 16th May, 1951, *vide* notification No.4342 L. R. dated the 30th April, 1951, published in the *Dhaka Gazette, Extraordinary*, dated the 16th May, 1951 Part I, page 400.

   The Act with certain exceptions was also extended to certain areas of the excluded areas of Chittagong Hill-tracts, *vide* notification No.1728 L. R., dated the 12th November, 1955, published in the *Dhaka Gazette, Extraordinary*, dated 30th November, 1955, pt. 1, p. 2015.

2. The words within square brackets were substituted for the words "East Bengal" by the Bangladesh Repealing and Amending Ordinance, 1960 (E. P. Ord. XXVIII of 1960), First Schedule.

PART–I

CHAPTER–I

Preliminary.

1. Short Title and extent : (1) This Act may be called the State Acquisition and Tenancy Act, 1950[1].

(2) It extends to the whole of Bangladesh[2].

2. Definitions : In this Act, unless there is anything repugnant to the subject or context, —

(1) "cesses" include local rates levied under the Assam Local Rates Regulation, 1879;

(2) "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;

(3) "Collecter" means the Collector of a district and includes a Deputy Commissioner and such other others as may be appointed by the Provincial Government to perform all or any of the functions of a Collector under this Act;

(4) "Commissioner" means the Commissioner of State Purchase appointed under sub-section (1) of section 48 ;

(5) "company" has the same meaning as in the Companies Act, 1913;

(6) "complete usufructuary mortgage" means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;

Note : Under the form of complete usufructuary mortgage a tenant transfers possession of his land to a mortgagee as a security for the loan on condition that the loan with interest shall be extinguished by the profits arising from the land during the period of the mortgage. Under section 95 of this Act, the period shall not exceed 15 years, after which the debt will be automatically extinguished and the mortgagor will get back his property.

(7) "consolidation," used with respect to holdings means the re-distribution of all or any of the areas of land comprised in the holdings for the purpose of rendering separate holdings more compact by reducing the total number of separate plots;

(8) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or the Bengal Co-operative Societies Act, 1940;

(9) "cultivating *raiyat*" or "cultivating under-*raiyat*" means a *raiyat* or an under-*raiyat*, as the case may be, who holds land by cultivating it either by himself or by members of his family or by servants or by *bargadars or by or with the aid of hired labourers or with the aid of partners;*

(9a)[3] "derelict tea garden" means any parcel or group of parcels of land held under single management which was held, settled or leased for the purpose of cultivation or manufacture of tea, or which has contained or contains tea bushes, and which has been notified by the Provincial Government to be a derelict tea garden and includes all buildings on such land;

Provided that in notifying a parcel or parcels of land as a derelict tea garden, the Provincial Government may have regard to —

(i) whether such land is planted to the extent of less than 15 per cent of its area with tea of which no substantial proportion has been planted in the previous 5 years; and

(ii) the opinion of the Tea Board as to whether the area planted with tea more than 7 years previously has produced per acre in the last 3 years less than 25 per cent of the average production per acre of the whole area planted with tea in the Province for that period;

3. This clause (9*a*) was added by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. No.XV of 1961) section 3 and the existing clause (9*a*) was re-numbered as clause 9(*b*).

(9*b*)[4] "Director of Land Records and Surveys" includes Additional Director of Land Records and Surveys;

(10) "encumbrance," in relation to any estate, tenure, holding, tenancy or land, means any mortgage, charge, lien, sub-tenancy, easement or other right or interest created by the holder thereof on such estate, tenure, holding, tenancy or land or in limitation of his own interest therein;

(11) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register and also includes the following in the district of Sylhet :—

(*i*) any land subject either immediately or prospectively to the payment of land-revenue for the discharge of which a separate engagement has been entered into;

(*ii*) any land subject to the payment of, or assessed with a separate amount as land revenue although no engagement has been entered into with the Government for that amount;

(*iii*) any land which is, for the time being, included under one entry in the Deputy Commissioner's register of revenue-free estates as well as revenue-free lands which are not so included in such register;

(*iv*) any land, being the exclusive property of Government, of which a separate entry has been made in the general register of revenue-paying and revenue-free estate mentioned in Chapter IV of the Assam Land and Revenue Regulation, 1886;

(12) "*hat*" or "*bazar*" means any place where persons assemble daily or on particular days in a week primarily for

4. Clause (9*b*) inserted by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance No.111 of 1956) was renumbered by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ordinance No. XV of 1961) section 3.

the purposes of buying or selling agricultural or horticultural produce, livestock, poultry, hides, skins, meat, fish, eggs, milk, milk-products or any other articles of food or drink or other necessaries of life, and includes all shops of such articles or manufactured articles within such place;

Note : The distinctive feature of a *hat* or *bazar*, as opposed to a number of shops established in a particular place, is that it is a place where people assemble daily or on particualr days in a week for the purpose of buying or selling articles of general household use.[5] The setting up of a few shops cannot be described as establishing a *hat* or *bazar*.[6] A *hat* or *bazar* is acquirable under sub-section *(2a)* of section 20 which was introduced by the Bangladesh Ordinance No.XII of 1960.

(13) "holding" means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy;

(14) "homestead" means a dwelling house with the land under it, together with any courtyard, garden, tank, place of worship and private burial or cremation ground attached and appertaining to such dwelling house, and includes any out-buildings used for the purpose of enjoying the dwelling house or for purposes connected with agriculture or horticulture and such lands within well defined limits, whether vacant or not, as are treated to be apperttaining thereto;

(15) "*khas* land" or "land in *khas* possession," in relation to any person, includes any land lt out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity;

(16) "land" means land which is cultivated, uncultivated or covered with water at any time of the year, and includes [benefits to arise out of land,][7] houses or buildings and also things attached to the earth, or permanently fastened to anything attached to the earth;

5. *Kazi Bahauddin v. Province of Bangladesh* (1961) 15 D. L. R. 5
6. *Ibid.*
7. These words and comma were inserted by the Last Bengal State Acquisition and Tenancy (Amendment) Act. 1953 (E. B. Act V of 1953) section 3.

(16a)[8] Notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court, the definition of "land" in clause (16) includes and shall be deemed always to have included all fisheries, several or territorial;

Note : In the case of *Tazammal v. Province of Bangladesh.*[9] it was held that a several fishery is an incorporeal right and can not be acquired under the Act. In arriving of this decision the learned judges observed : "A right of fishery in a navigable river cannot be taken to be benefits arising out of land. The dictum that fisheries are in their nature mere profits of the soil on which the water stands in true only in regard to territorial fisheries for there the right to fish arises from the right of the soil, but a several fishery in a navigable river is an incorporeal right. There the right to fish arises not from the right to the soil but from the fact of the navigability of the river. A several fishery cannot be regarded as encumbrance, for, it has no connection with the act or abstention of the owner of the land over which the navigable river flows. The fact that no provision has been made in section 39 of the Act for payment of compensation for a several fishery also leads to the conclusion that the legislature never intended to acquire such a fishery." To nullify the effect of this ruling, an extended definition of land has been incorporated in this clause by the Bangladesh Ordinance No. XII of 1960 which includes all fisheries— several or territorial. Under section 20(2*a*) introduced under the same Ordinance no person can retain any fishery other than a tank constructed solely by process of excavation.

(17) "non-agricultural tenant" means a tenant who holds land for purposes not connected with agriculture or horticulture, but does not include a person holding land together with any building standing thereon and necessary adjuncts thereto under a lease other than a lease in perpetuity:

8. Clause *(16a)* was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord.No.XII of 1960), section 3.
9. (1959)11 D. L. R. 145.

(18) "notification" means a notification published in the *Official Gazette;*

(18a)[10] "orchard" means a garden of fruit-trees grown by human efforts and includes cocoanut, betelnut and pineapple gardens;

(19) "prescribed" means prescribed by rules made under this Act;

(20) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

(21) "registered" means registered under any Act for the time being in force for the registration of documents;

(22) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use of occupation óf the land held by the tenant;

Note : To constitute rent, the thing payable or deliverable (1) must be either money or produce, (2) must be lawful, (3) must be payable by the tenant to his landlord on account of the use and occupation of the land held by the tenant.[11]

(23) "rent-receiver" means a proprietor or a tenure-holder, and includes a *raiyat,* an under-*raiyat* or a non-agricultural tenant whose land has been let out and also the immediate landlord of a person who holds any land free of rent in consideration of some service to be rendered, but does not include a person in respect of such of his lands, as has been let out, together with any building standing thereon and necessary adjuncts thereto, otherwise than in parpetuity;

Who is or who is not a rent-receiver : A proprietor, a tenure-holder,[12] a *raiyat,* an under-*raiyat* or a non-agricultural tenant whose land has been let out is a "rent-receiver"[13] but a person is not a rent-receiver in respect of such of his lands as has been let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity.[14] The whole of this clause is not governed by the words "otherwise than in perpetuity." They only govern the words "a person in respect of such of his land, as has been let out together with any building standing thereon and necessary adjuncts thereto." [15] If the land is let out permanently together with any building standing thereon and necessary adjuncts thereto, the lessor does not come within the exception and as such, he becomes a rent-receiver. The last portion of the clause which refers to the exception to "rent-receiver" makes it abundantly clear that a non-agricultural land let out together with any building standing thereon and necessary adjuncts there to comes within the exception subject to the condition that such land is not let out in perpetuity.[16] In our country a lease in perpetuity can be created by an express grant to that effect or by necessary presumption raised by the terms of a grant and by an unambiguous and long possession.[17] The "^*mirashdar*" in Sylhet is a rent-receiver.[18] A *mutwalli* or *shebait* holding property for the benefit of religious or charitable institutions is a rent-receiver within the meaning of clause (23) of section 2 of the Act.[19] This view seems to be perfectly clear from the subsequent provisions of the Act which expressly provide for the acquisition of rent-receiving interests in estates which are held under *wakf* or *debutter.*[20] A usufructuary mortgagee

10. Clause (18*a)* was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958), section 3.
11. For detailed study on rent, see author's *"The Bengal Raiyats",* Ch. 4, sec. 1.
12. An *ijaradar* is also a tenure-holder [*Nowab Sir K. G. M. Faroqui v. Province of Bangladesh* (1956) 9 D. L. R. 174]

13. *Aminbagh Co-operative Market Society v. Province of Bangladesh* (1967) 19 D. L. R. 50; *Surutannessa v. Debendra* (1966) 18 D. L. R. 490; *A. Noor v. Province of Bangladesh* (1966) 18 D. L. R. 666; *Abdul Hafiz v. Ashraf Ali* (1965) 17 D. L. R. 329.
14. *Surutannessa v. Debendra* (1966) 18 D. L. R. 490; *Abdul Hafiz v. Ashraf Ali* (1965) 17 D. L. R. 329.
15. *Surutannessa v. Debendra* (1966) 18 D. L. R. 490.
16. Ibid
17. *Abdul Hafiz v. Ashraf Ali* (1965) 17 D. L. R. 329.
18. *A. Noor v. Province of Bangladesh* (1966) 18 D. L. R. 666.
19. *Jibendra Kishore v. Province of Bangladesh* (1957) 9 D. L. R. (S. C.)21.
20. *Ibid.*

is not a rent-receiver; so his interest cannot be acquired under the provisions of the Act.[21] The mere fact that a mortgagee is in possession of the mortgaged property by realising rent therefrom will not bring him within the four corners of the Act.[22] The holder of *malikana* [23] is a rent-receiver and his interest is acquirable.[24]

(24) "Revenue-officer" includes any officer whom the Provincial Government may appoint to discharge all or any of the functions of a Revenue-officer under this Act or any rules made thereunder;

(25) "signed" includes "marked", when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(26) "succession" includes both intestate and testamentary succession;

(27) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person :

Provided that a person who, under the system generally known as "adhi," "*barga*" or "*bhag,*" cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(ii) he has been or is held by a Civil Court to be a tenant :

Note : The essential conditions of the status of a tenant are that (a) he holds land under another person, and (b) he is liable to pay rent (special contract being excluded).

The proviso refers to the status of a *bargadar*. It lays down that a person known as *bargadar, bhagchasi* or *adhiar* who

21. *Nowab Sir K. G. M. Faroqui v. Province of Bangladesh* (1956) 9. D. L. R. 174.
22. *Nowab Sir K. G. M. Faroqui v. Province of Bangladesh* (1956) 9. D. L. R. 174
23. See note under section 36.
24. *Khondkar Ali Afzal v. Province of Bangladesh* (1966) 18. D. L. R. 184.

cultivates the land of another on condition of delivering a share of the produce are not a tenant except in two cases, viz. (a) when such a cultivator is admitted in a document to be a tenant by the landlord; or (b) where he is adjudicated a tenant by a Civil Court. The position of such a person cannot be improved by possession for any length of time.

The share of the produce payable by a *bargadar* is not rent within the meaning of the Act. So a suit to recover such a share must be brought in a Court of small causes.

It may be observed that the farmers of the Act said in the statement of objects and reasons of the Bill that "so long as *barga* system remains, provision should be made for the protection of *bargadars* against arbitrary eviction from their *barga* lands." They also promised to distribute the lands among the *bargadars* and landless agricultural labourers. Accordingly some provisions were made in clauses 105 to 107 of the original Bill providing protection for *bargadars* and it also restricted *barga* cultivation. But the whole Chapter was omitted on the recommendation of the Special Committee who was not in favour of giving any rights to the *bargadars.* They were of opinion that "the *barga* system should not be interfered with in any way as the system is beneficial to the *bargadars.*"[25]

In our opinion the *barga* system should be abolished by legislation. As the *bargadars* have no interest in land, they take no initiative to develop the land for the improvement of agriculture. It is generally found that persons living in different avocations of life and persons possessing large area do not care for the improvement of agriculture. They enjoy the usufruct of the land at the cost of *bargadars.* Or they settle their lands with others on a temporary basis for one year on cash money. As their tenures are short, they are unwilling to invest capital for improving the land. Does it not affect the country's overall production which is so vital for developing economy? This class of people should have no right to retain land. Their lands should be distributed among those who are

25. Clauses 52 and 105 to 107 of the report dated 6th July, 1940.

really interested in agriculture. The idea may be disliked but the fact remains that the country is over populated; it needs intensive and mechanised cultivation to help achieve self sufficiency in food.

(28) "tenure" means the interest of a tenure-holder or an under-tenure holder;

(29) "village" means the area defined, surveyed and recorded as a distinct and separate village in any survey made by, or under the authority of the Government, and, where no such survey has been made, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village;

(30) "year" or "agricultural year" means the Bengali year commencing on the first day of *Baishakh;* and

(31) all words and expressions used in Parts I, II, III, and IV of this Act, but not defined in this Act, and used in the Bengal Tenancy Act, 1885 or in the Sylhet Tenancy Act, 1936, have the same meanings as in those Acts in the respective areas to which those Acts apply—

2A.[26] **Exemption :** The Provincial Government may, in public interest, exempt, by general or special order, the interests of any local authority in any land or class of lands from acquisition under the provisions of this Act.

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26. Section 2A was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958), section 4.

PART -II

CHAPTER -II

Special provisions for the acquisition of the interests of certain rent-receivers.

[There are two methods or acquisition of property—one in Chapter II and the other in Chapter V. Chapter II deals with special provisions for the acquisition of interests of certain rent-receivers. It enables the Provincial Government to acquire all the rent-receiving interests and, in fact, by several notifications, Government has acquired such interests and has totally wiped out the intermediate estates. This was done by virtue of the provisions of section 3(1) of the Act. Sub-section (2) of the same section furthermore empowers the Government to acquire all *khas lands* in possession of the rent-receivers, of which they are not entitled to retain possession under section 20. By notification No.4839-L.R. dated 2nd April, 1956, all lands, other than retainable *khas* lands, have in fact been acquired by the Government and have vested in the Government. But so far as the class of persons, who were at the bottom of the ladder, namely the tenants this Chapter did not, in fact, empower the Government to touch them at all.[1] On the contrary, the tenants of expropriating landlords have become, by the operation of law, tenants directly under the Provincial Governments.[2]

Sections 3A and 4 provide for service of notice upon a rent-receiver before and after notification to furnish a return within certain time showing certain particulars. In default he is liable to fine. Section 5 deals with the determination of rent of *khas* lands retained by him. To mitigate the financial stringency of a rent-receiver he is allowed under section 6 an *ad-interim* payment which will be adjusted against the compensation money payable, to him. Similar arrangements have also been made under section 6A for *ad interim*

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1. Secretary *M. A. S. Madrasa v. Province of Bangladesh* (1962) 15 D. L. R. 37.
2. Sec. 3(4) (e).

payments to a *mutwalli* or a *shebait* or a trustee in respect of properties held under *wakf, wakf-alal-aulad, debutter* or any other trust. Section 10 exempts such payments from being attached in execution of a decree other than a decree or certificate for the recovery of arrears of revenue, rent or cess due in respect of the properties to which such payment relates.

Section 9 restricted the mode of transfer by a rent-receiver of his *khas* lands by sale or mortgage. The restriction was imposed to prevent complications before the preparation of the record-of-rights or compensation assessment-roll as undertaken.[3] Sections 9 to 9D were repealed by Act VI of 1964 immediately after the preparation of record-of-rights and compensation assessment-rolls have been prepared.

In respect of properties held under *wakf, wakf-alal-aulad, debutter* or any other trust, the *mutawalli, shebait* or the trustee is allowed under section 10A to manage the estates as an agent of the Provincial Government till certain time.

3. Acquisition of the interests of certain rent-receivers and consequences thereof : (1) At any time after the commencement of this Act, it shall be lawful for the Provincial Government to acquire by notification in the *Official Gazette*, with effect from such date as may be specified in the notification (hereinafter referred to as the notified date),—

(i) all interests of such of the rent-receivers as may be specified in the notification, in their respective estates, [*taluks*, tenures, holdings or tenancies,][4] as the case may be, in any district, part of a district or local area, and

(ii) all interests of all rent-receivers whose properties are, for the time being, under the management of the Court of Wards under the Court of Wards Act, 1879, in their respective estates, [*taluks*, tenures, holdings or tenancies],[4] as the case may be,

3. *Provinc of Bangladesh v. Md. Hossain* (1964) 16 D. L. R. 667.
4. These words and commas were substituted for the words "*taluks* or tenures" by the East Bengal State Acquisition and Tenancy (Amendment) Act.1952 (E. B. Act VI of 1952), section 3.

including all their interests in all sub-soil and rights to minerals in such estates, [*taluks*, tenures, holdings or tenancies.][4]

(2) Subject to the provisions of sub-sections (2), (3), [(4), (5), and (6)][5] of section 20, the Provincial Government may also, simultaneously with or at any time after the publication of a notification under sub-section (1) in respect of the interests or any rent-receiver in any estate, [*taluk*, tenure, holding or tenancy][6] acquire by notification in the *Official Gazette*, with effect from such date as may be specified in the notification (hereinafter referred to as the notified date), [all or any of the lands in his *khas* possession of which he shall not be entitled to retain possession under the said section and so much of the lands in his *khas* possession as has been acquired under this sub-section and has not vested in the Provincial Government under clause *(a)* of sub-section (4) shall vest absolutely in the Provincial Government free from all incumbrances].[7]

(2a)[8] In a notification issued under this section, rent-receivers may be specified or described by name, or by reference to areas wherein they have interests, or in such other manner as the Provincial Government may determine.

(3) The notification referred to in sub-section (1) or sub-section (2) shall be in such form and shall contain such particulars as may be prescribed.

5. The word, comma, brackets and figures "(4), (5) and (6)" were substituted for the word, brackets and figures "(4) and (5)" by the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord. No. XII of 1960), section 4.
6. These words and commas were substituted for the words "*taluk* or tenure" by section 3 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952).
7. These words and commas were substituted for the words and commas "all or any of the lands in his *khas* possession, in such estate, *taluk*, tenure, holding or tenancy, of which he shall not be entitled to retain possession under the said section" by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act XII of 1954), section 3.
8. Sub-section *(2a)* was added by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ord. No.III of 1956), section 4.

(4) On and from the date specified in a notification under sub-section (1),—

(a) all interests of the rent-receivers in the estates, [taluks, tenures, holdings or tenancies][9] specified in the notification, including their interests in all lands in their *khas* possession, and interests in all sub-soil and rights to minerals, in such estates, [*taluks*, tenures, holdings or tenancies][9] and also including the interests of any such rent-receiver in any building or part of a building standing on any such land and used primarily as office or *cutchery* for the collection of rent of any estate, [*taluk*, tenure, holding or tenancy],[10] shall vest absolutely in the Provincial Government free from all encumbrances . . . .[11]

Provided that nothing in this clause shall apply to any building within the homestead of the rent-receiver concerned;

(b) all arrears of revenue or rent and all cesses, together with interest, if any, payable thereon remaining lawfully due to the Collector on the notified date in respect of any interest acquired under sub-section (1) shall, after the said date, continue to be recoverable from the person by whom they were payable and shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amount of such arrears, cesses and interest from the compensation money payable to such person under section 58, when so ordered by the Collector ;

(c) all arrears of rent and all cesses, together with interest, if any, due thereon, in respect of any period previous to the notified date payable to a rent-receiver in respect of any interest acquired under sub-section (1) which have not been barred by limitation shall, on and from the said date, vest in,

9. These words and commas were substituted for the words "taluks or tenures" by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952) section 3.
10. These words and commas were substituted for the words "*taluk* or tenure" by section 3, *ibid.*
11. The words "other than *sub-tenancies*" were omitted by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ord.No.III of 1956), section 4.

and be recoverable by, the Provincial Government and shall, without prejudice to any other mode of recovery, be recoverable, from the persons by whom they were payable, by the deduction of the amount of such arrears, cesses and interest from the compensation money, if any, payable to such persons under section 58, when so ordered by the Collector;

(d) all amounts recoverable by the Provincial Government from a rent-receiver under the Bengal Embankment Act, 1882, [or the East Bengal Embankment and Drainage Act, 1952][12] which remain outstanding on the notified date, whether on account of arrear dues or dues under future instalments under the said Acts, in respect of any interest acquired under sub-section (1), shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amounts of such arrear and future instalments from the compensation money payable to such rent-receiver under section 58 in respect of such interest, when so ordered by the Collector;

(dd)[13] all arrears of agricultural income-tax recoverable by the Provincial Government from a rent-receiver under the Bengal Agricultural Income-tax Act, 1944, which remain outstanding on the notified date, in respect of any interest acquired under sub-section (1), shall, without prejudice to any other mode of recovery be recoverable by the deduction of the amounts of such arrears from the compensation money payable to such rent-receiver under section 58 in respect of such interest, when so ordered by the Collector ;

(e) all tenants holding lands in such estates [*taluks*, tenures, holdings or tenancies][14] directly under the rent-receiver specified in the notification under sub-section (1),

12. The words, comma and figures within square brackets were inserted by the E. P. Repealing and Amending Ordinance, 1960 (E. P. Ord. XXVIII of 1960). First Schedule.
13. Clause (dd) was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance 1959 (E. p. Ord. No.XXXIX of 1959), Section 3.
14. see foot-note 9 on p.22

shall become tenants directly under the Provincial Government and shall pay rent at the existing rate, in respect of the rent-paying lands so held by them to the Provincial Government and not to anybody else.

Provided that in cases where no notification was issued under sub-section (2) of section 43 before the commencement of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1957, declaring that the Compensation Assessment roll in respect of the interest of any such rent-receiver in any such estate, *taluk*, tenure, holding or tenancy had been finally published, all tenants holding lands in such estate, *taluk*, tenure, holding or tenancy directly under such rent-receiver shall, as tenants under the Provincial Government, be liable to pay rents in respect of the lands so held by them, except rent-free lands, at the rates determined in the record-of-rights finally published under sub-section (3) of section 19 subject to modification under section 53;[15]

(f) all such rent-receivers shall be entitled to hold as tenants directly under the Provincial Government such of their *khas* lands as has not been acquired under sub-section (2) and shall be liable to pay to the Provincial Government, the rent determined for such lands under section 5;

(ff)[16] pending the final publication of the record-of-rights under sub-section (3) of section 19 or determination of rents under section 5, as the case may be, the tenants referred to in the proviso to clause *(e)* and in clause *(f)* shall pay rents to the Provincial Government at the rates shown in the preliminary rent-rolls prepared under the rules made[under Chapter IV in the district other than the district of Sylhet; and, in the district of Sylhet, the tenants referred to in the proviso to clause *(e)* shall pay rents to the Provincial Government at the rates shown in the provisional rent-rolls, prepared on the basis of draft record-of-rights attested under the provisions of the Sylhet Tenancy Act, 1936, the Assam Land and Revenue Regulation, 1886, or the East Bengal State Acquisition and Tenancy Act, 1950, as the case may be, and the tenants referred to in clause *(f)* shall pay rent to the Provincial Government at the rates determined under section 5 and the rules made thereunder;][17]

Provided that when any such rent is shown either at an enhanced or at a reduced rate in the record-of-rights finally published under sub-section (3) of section 19, or determined either at an enhanced or at reduced rate under section 5, as the case may be, or when any such rent is enhanced or reduced under section 53, the tenant shall be liable to pay the balance or entitled to the adjustment of excess payment agaisnt future rent payable by him, as the case may be, with retrospective effect from the notified date ;

(g) an arrear or rent payable under [clauses *(e)*, *(f)* and *(ff)*[18]] [may, without prejudice to any other mode of recovery,'[19] be recoverable under the Bengal Public Demands Recovery Act, 1913;

(h) a transferable tenure coming [in whole][20] directly under the Provincial Government under clause (e) shall be

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15. This proviso was added by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord.No.XLIV of 1958) section 5.
16. Clause *(ff)* with the proviso was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord.No.XLIV of 1958) section 5.
17. The words, figures, brackets, commas, semi-colon and colon within square brackets were substituted for the words, figures and colon "under Chapter IV" by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance 1959 (E. P. Ord. No. IV of 1959), section 3.
18. The words, brackets, comma and letters within square brackets were substituted for the words, brackets and letters "clause *(e)* and *(f)*" by the East Bengal State Acquisition & Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No. XLIV of 1958), section 5(3).
19. These words and commas were substituted for the word "shall" by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (East Bengal Act VI of 1952), section 4.
20. These words were inserted by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (East Bengal Act, VI of 1953), section 4.

deemed to be a tenure as defined in section 1 of the Bengal Land Revenue Sales Act, 1968.

(4a)[21] Notwithstanding anything contained in any other law for the time being in force, in computing the period of limitation for the recovery of any arrear of rent payable under clauses *(e)*, *(f)* and *(ff)* of sub-section (4) in the district of Sylhet, a period of twenty-four months on and from the date of acquisition under this Act of the rent-receiving interests to which such arrears relate shall be excluded.

(5) The outgoing rent-receivers, whose interests have been acquired under this section, shall be entitled to compensation as provided in this Act.

Note : Section 3 provides for the acquisition of interests of rent-receivers and the consequences thereof. The underlying principle of this section can be gathered from the judgement delivered by Munir, C. J. of the Supreme Court of Pakistan in the case of *Jibendra Kishore v. Province of Bangladesh*[22] in the following terms :–

"If the provisions of the Act the examined in the light of history of the Act, it appears to be perfectly clear that the intention was to eliminate all rent-receiving interests in all the lands in the Province and to create a uniform class of tenants directly under the Provincial Government. In order to attain that purpose, section 3 gives to the Provincial Government the power or discretion to acquire simultaneously, or from time to time, as was considered to be expedient, the interests which had been decided upon to be terminated. The conferment of this kind of discretion cannot be held to be void though the action taken in exercise of that power, if it is unjust, oppressive and partial, may be called in question on the ground that the person or persons less favourably treated have been denied the equal protection of law."

21. Sub-section *(4a)* was inserted and be deemed to have been so inserted on the 13th April, 1960 by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1961 (E. P. Ord. No.III of 1961), section 2.
22. (1957) 9 D.L.R. (SC.) 21.

Sub-section (1) of section 3 enables the Provincial Government to acquire by notification in the *Official Gazette*, all interests of the rent-receivers as may be specified in the notification in their respective estates, *taluks*, tenures, holdings or tenancies in any district, part of a district or local area. Sub-section (2) of that section empowers the Government also to acquire in a similar manner all or any of the lands in the *khas* possession of such rent-receivers of which they are not entitled to retain possession under section 20.

In exercise of the authority conferred by this section, the Provincial Government by several notifications acquired the interests of certain rent-receivers and the lands in their *khas* possession before the constitution came into force. On the 2nd April, 1956, the Provincial Government issued further notification.[23] district wise purporting to acquire the interests of the remaining rent-receivers under sub-section (1) and lands in their *khas* possession under sub-section (2), with effect from 14th April, 1956. The whole sale acquisition became effective on the midnight of 30th *Chaitra*, 1362 B.S.[24] Under sub-section (5) the rent-receivers are entitled to compensation as provided in the Act.

The notifications of the 2nd April 1956, were challenged in the case of *Jibendra Kishore v. Pronvince of Bangladesh*.[25] In this case 83 petitions for writs of *mandamus* or in the nature of *mandamus* were moved in the High Court of Dhaka against the Government of Bangladesh directing them to withdraw or rescind the notifications that have been issued under sub-sections (1) and (2) on the 2nd of April, 1956. The principal attack on the notifications was on the strength of Article 5 of the Constitution which provides that "All citizens are equal before law and are entitled to equal protection of law." The argument addressed was that section 3 of the Act which enables the Provincial Government to pick and choose

23. *Dhaka Gazette*, Extraordinary dated 2nd April, 1956. Part I, pp.471-474; *Sarat v. Ananta* (1963) 15 D. L. R. 744; *Jibendra Kishore v. Province of Bangladesh* (1957), 9 D. L. R. (S. C) 21.
24. *Surutannessa v. Debendra* (1966) 18 D. L. R. 490
25. (1957) 8 D. L. R. 457.

rent-receivers whose interests are to be acquired confers on that Government a naked and arbitrary power which being capable of being used in a discriminatory manner is void by reason of Article 5 which guarantees equal protection of law to the citizens of the Sate.

These petitions, except some, were heard by a Full Bench of three Judges including Amin Ahmed, C. J., who, on the conclusion of a lengthy argument, delivered their judgement on 7th August, 1956 unanimously repelling all constitutional objections to the notifications.

Being dissatisfied with the Judgment of the High Court and having obtained from that Court a certificate under clause (1) of Article 157 of the Constitution, the rent-receivers have appealed to the Supreme Court of Pakistan[26] on the ground that the objections urged by them against the notifications were wrongly decided in the High court. There were as many as 59 appeals.

After discussing many American and Indian decisions, Munir, C. J. of the Supreme Court of Pakistan, with whom M. Shahabuddin, A. R. Cornelius, Md. Sharif and Amiruddin Ahmed, JJ. concurred, came to the conclusion that "the Act challenged in these cases is not discriminatory on the face of it because it does no more than empower the Provincial Government to acquire the interests of such rent-receivers as may be specified in the notification in any district, part of a district or local area, and the Provincial Government could, as it has actually done so far as the present applicants are concerned, acquire the interests of all rent-receivers throughout the province at one and the same time, and if the law be, as I think it is, that in cases where a statute is not *ex-facie* discriminatory, but is capable of being administered in a discriminatory manner, the party challenging the constitutionality of that statute must show that it has actually been administered to the detriment of a particular class and in a partial, unjust and oppressive manner, the applicants' case must fail because the acquisition challenged is not

26. *Jibendra Kishore v. Province of Bangladesh* (1957) 9 D. L. R. 21 S. C.

piecemeal but wholesale, and nobody can have any occasion to complain that he or the class to which he belongs has been singled out for a discriminatory treatment . . . and in the absence of any proof that it was in fact administered in such a manner, it must, accordingly be held that because there is no allegation in any of the appeals that section 3 of the Act has in fact been applied discriminatorily, the action taken cannot be called in question on the ground that Provincial Government, if it had been so inclined, could have picked and chosen any partcular class or section of rent-receivers for expropriation."

From the date specified in the notification under sub-section (1), all interests of the rent-receivers have vested absolutely in the Provincial Government free from all encumbrances.[27] It was held[28] that a *mutwalli* or a *shebait* is a rent-receiver within the meaning of clause (23) of section 2 of the Act. The notification is applicable to him, that is to say, by operation of the Act this class of rent-receivers is divested of their interests in the land which whether they vested in the Almighty or a deity or for the purposes of the Act in the *mutwalli* or the *shebait*, are from the date of the notification transferred absolutely to the Provincial Government.[29] And under sub-section (5) of section 3, the outgoing *mutwalli* or *shebait* becomes entitled to compensation as provided in the Act. It was held[30] that *malikana*[31] is a rent-receiving interest and as such it is acquirable under the Act. The interest of a lessor who has granted a temporary lease is also acquirable with only one exception, namely, a temporary lease in respect of non-agricultral land is not acquirable.[32]

Sub-section (2) provides for acquisition of the *khas* lands of the rent-receivers which they cannot retain under section 20. As the acquisition of *khas* lands is subject to the

27. Sec. 3(4)(a).
28. *Jibendra Kishore v. Province of Bangladesh* (1957) 9 D. L. R. 21 S. C.
29. *Ibid.*
30. *Khondkar Ali Afzal v. Province of Bangladesh* (1966) 18 D. L. R. 184.
31. See note under Sec. 36.
32. *Surutannessa v. Debendra* (1966) 18 D. L. R. 490; *Abdul Hafez v. Ashraf Ali* (1965) 17 D. L. R. 329.

provisions of sub-section (2), (3), (4) and (5) of section 20, the rent-receivers whose interests have been acquired under sub-section (1) can retain all their *khas* lands in excess of the retainable limit till the excess lands are determined and taken out in the manner prescribed in these sub-sections, but those rent-receivers shall till then hold all their *khas* lands as tenants directly under the Provincial Government under clause (f) of sub-section (4) of section 3 of of the Act.[33]

Under section 20(2) a rent-receiver is entitled to retain 375 standard *bighas* of land or an area determined by calculating at the rate of 10 standard *bighas* for each member of his family whichever is greater. When he possesses land upto the prescribed limit no part of his land is acquirable.[34]

It is true that section 3 provides for acquisition of rent-receiving interest and thereafter or simultaneously of *khas* lands. But the Provincial Government cannot acquire *khas* lands simultaneously with or at any time after the publication of notification under sub-section (1) unless they are in possession of dates or particulars as required by law. When the Government is not in possession of datas, including the statement of choice, they cannot acquire *khas* lands, allowed by law to be acquired, without previously following certain procedure. That portion of land which is in excess of retainable limit provided by section 20 of the Act can be acquired and that also after serving notice calling for statement of choice from the rent-receiver. When the statement of choice is furnished, his choice shall have to be given effect to. When the rent-receiver does not exercise his right of choice after notice served on him, the Revenue-officer can acquire the *khas* lands in excess of the limit imposed by law. If the procedure is not followed the acquisition will be illegal.[35]

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33. *Nirode v. Ustar Mia* (1963) 16 D. L. R. 202 at 204.
34. *Adhu Miah v. Bazlur Rahman* (1964) 16 D. L. R. 669; *Mafazzal v. Haji Abdus Sattar* (1963) 16 D. L. R. 92; *Md. Ibrahim v. S. D. O. Natore* (1962) 15 D. L. R. 703.
35. *Jadu Nath v. Province of* Bangladesh (1956) 13 D. L. R. 496; *Mafazzal v. Haji Abdus Sattar* (1963) 16 D. L. R. 92.

When the excess lands of the rent-receivers have been acquired under sub-section (2) of section 3, it shall vest absolutely in the Provincial Government free from all encumbrances.[36] In the case of *Nirode Ranjan v. Ustar Mia*[37] a question was raised whether the *khas* lands retained by the rent-receivers have also vested in them free from all encumbrances. It was held that they retain the lands subject to encumbrances created by them or by their default. The vesting of the excess lands free from all encumbrances as referred to in sub-section (2) only speaks of the Government. There is no direct or specific provision in the Act whether the rent-receivers also will get land after acquisition free from all encumbrances.[38]

When the encumbrances on a tenure are annulled before the date of acquisition (14.4.56), *khas* lands under the tenure pass to the purchaser.[39]

The acquisition if otherwise valid will not be rendered invalid merely because compensation for acquisition has not been paid.[40] In the instant case[41] it was argued that under the Constitution no property can be acquired without payment of compensation. The Act also provides for payment of compensation, and where no compensation has been paid, the mere fact of vesting does not have the effect of acquisition being complete. It was held that payment of compensation not being a condition precedent for acquisition, its non-payment before the fundamental rights came into operation on the 10th January, 1964 cannot be said to have affected the position of the Provincial Government if the estates have otherwise vested in them. It was next argued that even if vesting is complete the Government cannot exercise any act of

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36. Sec. 3(2)
37. (1963) 16 D. L. R. 202.
38. *Ibid.*
39. *Adhu Meah v. Bazlur Rahman* (1964) 16 D. L. R. 669.
40. *Province of Bangladesh v. Nowab Khawaja Habibullah Bahadur* (1965) 18 D. L. R. 727; *Jalil Ahmed v. Province of Bangladesh* (1966) 15 D. L. R. (Dhaka) 1049 at 1106 S. B.
41. *Province of Bangladesh v. Nowab Khawaja Habibullah Bahadur* (1965) 18 D. L. R. 727.

possession after the 9th January, 1964 for non-payment of compensation. But the Court was unwilling to accept this argument.

In order that a notification under this section becomes effective, it is necessary that it should be published before the date mentioned in the notification on and from which the Provincial Government intends to acquire the estate in regard to which the notification is issued. If this is not done, the notification will be absolutely ineffective.[42]

The original provision in section 3 was that the notification for the acquisition of the rent-receiving interests under this section must be published with reference to particular estates, *taluks*, tenures, holdings or tenancies and in respect of all rent-receivers whose properties were under the management of the Court of Wards. By Ordinance III of 1956, however, sub-section *(2a)* was introduced in section 3 which empowered the Provincial Goverment to publish notifications under section 3 in respect of rent-receivers by name or by reference to areas wherein they have interests or in such other manner as the Provincial Government may determine. After the Introduction of sub-section (2a) the general notifications dated the 2nd April, 1956 were issued district wise in regard to all rent-receiving interests with reference to area. Failure to specify or mention the interest of the rent-receivers falling in the area, does not render the acquisition invalid.[43]

Sub-section (3) empowers the Provincial Government to prescribe the form of the notification to be issued thereunder. In exercise of this power it has been prescribed in Rule 3 framed under the Act that the notifications referred to in sub-sections (1) and (2) of section 3 shall be in Form No.I and Form No.II respectively where the rent-receivers are specified or described by name and in Form No.IIA and Form No. IIB

42. *Province of Bangladesh v. Nowab, Khawaja Habibullah Bahadur* (1955) 18 D. L. R. 727.
43. *Aftabuddin v. Province of Bangladesh* (1962) 14 D. L. R. 420; *Jibendra Kishore v. Province of Bangladesh* (1956) 9 D. L. R. (S. C.) 21 at 46.

respectively where the rent-receivers are specified or described by reference to areas wherein they have interests and shall contain the particulars indicated therein.

Sub-section (4) speaks of the consequences that will ensue after the acquisition of the rent-receiving interests. Clauses *(a)* and *(f)* of this sub-section being inter-related should be read together. The cumulative effect of the clauses on the *khas* lands of rentreceivers is that on and from the date specified in a notification under sub-section (1), all *khas* lands hitherto held by them in their capacity as rent-receivers shall, with effect from the said date, be held by them in a different capacity, namely, as tenants directly under the Provincial Government on payment of rent determined for the *khas* lands under section 5 of the Act.[44]

According to clause *(a)* of sub-section (4) the following interests of a rent-receiver have vested after acquisition in the Provincial Government free from all encumbrances :—

(1) interest of a rent-receiver in his estate, *taluk*, tenure, holding or tenancy;

(2) interest in all lands in the *khas* possession of a rent-receiver in such estate, *taluk*, tenure, holding or tenancy;

(3) interest in all sub-soil and right to minerals in such estate, *taluk*, tenure, holding or tenancy;

(4) interest in *hats*, *bazars*, forests, fisheries and ferries;[45]

(5) interest in any building or part of a building which is used primarily as office or *cutchery* for the collection of rent of any such estate, *taluk*, tenure, holding or tenancy. But a building within the homestead of a rent-receiver cannot be acquired by the Government as it is saved from acquisition.[46]

Encumbrances include all easements and customary rights which are extinguished when the estate vests after acquisition in the Provincial Government.[47]

44. *Nirode Ranjan v. Ustar Mia* (1963) 16 D. L. R. 202; *Tayabullah v. Siddique* (1961) 13 D. L. R. 610.
45. Sec.20 (2a).
46. Sec. 3(4) (a), Proviso.
47. *Kalicharan v. Tamizuddin* (1958) 10 D. L. R. 523

Clauses *(b)*, *(d)* and *(dd)*, introduced by the Bangladesh Ordinance No. 39 of 1959, empower the Government to realise the arrears of revenue or rent and cesses and other dues outstanding to the Government and arrears of agricultural income tax from the outgoing rent-receivers. Clause (c) declares that all arrears of rent and cesses together with interest payable to them by their tenants shall vest in the Provincial Government and the Government will recover the arrears provided it is not barred by the law of limitation. All kinds of arrears are recoverable out of the compensation money payable to the outgoing rent-receivers. This is an additional procedure without prejudice to any other mode of recovery. It is open to the Collector to recover the arrears in any other manner recognized by law.

Clause *(c)* declares that from the date of acquisition of rent-receiving interests, all tenants holding lands under the rent-receivers will be tenants directly under the Government. Similar is the case of persons who were holding over as tenants after the expiry of the lease.[48] After the acquisition of the rent-receiving interests there will be only one class of tenants, namely, a *raiyat* under the Government. That being so the under-*raiyats* are up-graded as *raiyats*.[49]

When the tenants have come directly under the Government they are to pay rent of their holdings to the Provincial Government and not to any body else. At first they paid rent at the existing rate.[50] Pending the final publication of the record-of-rights they are directed by the Bangladesh Ordinance No. 44 of 1958, to pay rent at the rates shown in the preliminary rent-rolls.[51] As there was no preliminary rent-roll in the district of Sylhet, the tenants of that district paid rent at the rates shown in the provisional rent-rolls.[52]

48. *Lalita v. Rafique* (1965) 18 D.L.R. 107.
49. *Rafiqul Islam v. Kazi Taibar Ranman* (1966) D.L.R. 475; *Priya Bala v. Fazar Ali* (1965) 18. D.L.R. 480 *Mubashor Ali v. Md. Makbul Hossain* (1965) 15. P.L.R. Dhaka) 487; *Arfan Ali v. Ead Ali* (1962) 14. D.L.R. 791.
50. Sec. 3 (4) *(e)*.
51. Sec. 3 (4) *(ff)*.
52. Ibid.

Finally the tenants are directed to pay at the rates determined in the record-of-rights finally published under sub-section (3) of section 19 of the Act.[53] If the rent is enhanced in such records, the tenants will pay the balance; if it is reduced they are entitled to the adjustment of excess payment against future rent with retrospective effect from the notified date.[54]

The arrears of rent may, without prejudice to any other mode of recovery, be recoverable under the Public Demands Recovery Act. 1913.[55] Sub-section (4a) of section 3, inserted by the Bangladesh Ordinance No. III of 1961, extends the period of limitation for realization of arrears of rent in the district of Sylhet by two years from the date of acquisition of the rent-receiving interests.

3A.[56] Service of notice for furnishing return before notification : For the purpose of acquisition, under section 3, of the interest of any rent-receiver in any estate, *taluk*, tenure, holding or tenancy or of the lands in his *khas* possession, the Revenue-officer may, at any time before the publication of a notification under sub-section (1) or sub-section (2) of that section in respect of such interest or lands, cause a notice to be served on such rent-receiver in the prescribed manner, directing him to furnish, within such time, not being less than sixty days from the date of service of the notice, as may be specified therein, a return in the prescribed form showiong all or any of the following particulars, as may be required by such notice :—

(i) the total area and description of all the esates, *taluks*, tenures, holdings and tenancies held by him and the annual revenue or rent and cesses payable by him in respect thereof to the Provincial Government or to his immediate superior landlord, as the case may be;

53. Proviso to sec. 3 (4) *(e)*.
54. Proviso to sec. 3(4) *(ff)*.
55. Sec. 3(4) *(g)*.
56. Section 3A was inserted by the East Bengal State Acquisition and Tenancy (Amendment) Act. 1952 (East Bengal Act VI of 1952), section 5.

(ii) the names of the villages, *thanas* and districts in which the lands of the estates, *taluks*, tenure, holdings and tenancies are situated, together with a list of collection papers relating thereto, for a period not exceeding five years immediately preceeding;

(iii) the area, description and classification of all lands in his *khas* possession with the names of villages and *thanas* in which they are situated;

(iv) the names of all co-sharers having joint collection with him, with their respective shares in such estates, *taluks*, tenures, holdings and tenancies; and

(v) such other information as the Revenue-officer may deem necessary.

Note : In section 3A reference has been made as to acquisition of *khas* lands in addition to rent-receiving interest before preparation of record-of-rights.[57] The Revenue-officer is to serve a notice upon a rent-receiver before acquisition directing him to submit a return showing particulars as may be required by him for the purpose of acquisition of the properties of a rent-receiver.

4. Service of notice to furnish returns, etc. and penalty for non-compliance : (1) As soon as may be after the publication of a notification under sub-section (1) of section 3, [the Revenue-officer may] [58] cause a notice to be served in the prescribed manner on every rent-receiver specified in such notification other than a rent-receiver whose properties are under the management of the Court of Wards under the Court of Wards Act, 1879, directing him to furnish—

(a) a return in the prescribed form showiong—

(i) the total area and description of the estates [*taluk*, tenure, holding or tenancy][59] in respect of which his interests are acquired by the said notification and the annual revenue or rent and cesses payable by him in

57. *Jadu Nath v. Province of Bangladesh* (1956) 13 D. L.R. 496.

58. These words were substituted for the words "the Revenue-officer shall" by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ord.III of 1956), section 5.

respect thereof to the Provincial Government or to his immediate superior landord, as the case may be.

(ii) the names of the villages with *thanas* and districts in which the lands of the estate, [*taluk*, tenure, holding or tenancy][59] are situated and the total annual demand of rent and cesses of each village with a list of collection papers in support of the demand.

(iii) the area and description of the lands in his *khas* possession, and

(iv) the names of all co-sharers having joint collection with him, with their respective shares in such estate, [*taluk*, tenure, holding or tenancy][59] and

(b) such other information, papers or documents as the Revenue-officer may deem necessary.

and to hand over all papers of his *sherista* relating to the estate, [*taluk*, tenure, holding or tenancy],[59] to such officer and within such time, not being less than sixty days from the date of service of the notice, as may be specified in such notice:

Provided that it shall not be necessary for a rent-receiver to furnish such of the particulars as, in the opinion of the Revenue-officer, have already been correctly furnished by him pursuant to a notice under section 3A.[60]

(2) The officer taking delivery of the papers mentioned in sub-section (1) shall grant a receipt for the papers handed over to him.

(3) All co-sharers having joint collection shall be jointly and severally liable to comply with the directions given in [a notice under sub-section(1) of this section or section 3A][61] so far as they relate to any estate, [*taluk*, tenure, holding or tenancy][62] held by them jointly.

59. See foot-note 10 on page 22.

60. This proviso was added, after substituting a colon for the full-stop at the end of sub-section (1) of section 4, by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952), section 6.

61. This expression was substituted for the expression "such notice" by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E.B. Act VI of 1952), section 6.

62. See foot-note 10 on page 22.

(4) If any person, on whom a notice has been served under [sub-section (1) of this section or section 3A],[63] wilfully fails to comply with all or any of the directions contained in such notice within the time specified therein or within such further time as the Revenue-officer may allow in his discretion, or wilfully furnishes any incorrect information or suppresses any information, paper or document, in respect of any estate, [*taluk*, tenure, holding or tenancy],[62].

(*a*) he shall be liable to a fine, to be imposed by the Revenue-officer after giving the defaulting person an opportunity of being heard, which, may, —

(*i*) in the case of a revenue-paying estate or a rent-paying [*taluk*, tenure, holding or tenancy],[62] extend to five times the annual revenue of the estate or the annual rent of the [*taluk*, tenure, holding or tenancy],[62] as the case may be, and

(*ii*) in the case of a revenue-free estate or a rent-free [*taluk*, tenure, holding or tenancy],[62] extend to such amount not exceeding two thousand five hundred rupees as the Revenue-officer may fix in his discretion ; and

(*b*) in addition, he may be deprived of the benefit of the *ad interim* payment as provided in section 6, if so ordered by the Revenue-officer.

(5) (i) If any rent-receiver, on whom a notice has been served under sub-section (1), fails to hand over the papers of his *sherista* relating to any estate, [*taluk*, tenure, holding or tenancy][64] in accordance with the direction contained in such notice within the time specified therein or within such further time as the Revenue-officer may allow in his discretion, the Revenue-officer or any other person authorised by him, may, with such assistance, if any, as he thinks necessary, enter upon any land or building, where the Revenue-officer has reason to believe that such papers may be found, and seize and take possession of such papers as he may consider essential for the management of such estate, [*taluk*, tenure, holding or tenancy]: [64]

63. This expression was substituted for the expression "sub-section (1)" by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952) Section 6.

64. *See* foot-note 10 on page 22.

Provided that the Revenue-officer or such other person shall not enter upon any enclosed courtyard or garden attached to a building except with the consent of the inmate or occupier thereof, or if such consent is refused, except after giving such inmate or occupier at least two hours' notice in writing of his intention to do so :

Provided further that an inventory of the papers taken possession of by the Revnue-officer or such other person under this sub-section shall be furnished to the rent-receiver concerned by the Revenue-officer.

(*ii*) The provisions of this sub-section shall apply without prejudice to the provisions of sub-section (4).

(6) Any rent-receiver, who has handed over the papers of his *sherista* relating to any estate, [*taluk*, tenure, holding or tenancy][64] to an officer of the Provincial Government under sub-section (1), or any person interested in such an estate, [*taluk*, tenure, holding or tenancy].[64] shall be entitled to inspect such papers in the prescribed manner and to get copies of any such paper on payment of the prescribed fees.

Note : For managing the acquired properties it is necessary to procure the necessary records, papers and other information from the outgoing rent-receivers. Hence this section directs the Revenue-officer to take possession of the same from them. Under sub-section (1) he is to serve a notice as soon as possible after notification for acquisition of the rent-receiving interest, upon every rent-receiver, other than a rent-receiver whose properties are under the management of the Court of Wards, for furnishing returns within certain time and in the prescribed manner showing the particulars indicated therein. If the particulars are correctly furnished under section 3A, it is unnecesary to submit them again under this section. Under sub-section (3) all co-sharers having joint collections shall be jointly and severally liable to submit the returns as required under sub-section (1) of this section or section 3A.

Under sub-section (4) if any person wilfully furnishes any incorrect information or suppresses any information, paper or document in respect of any estate, *taluk*, tenure, holding or tenancy, the Revenue-officer shall, after giving him a hearing, impose fine upon such person and in addition, he may be deprived of the benefit of *ad interim* payment. Any person aggrieved by an order of the Revenue-officer may prefer an appeal before the superor Revenue Authority within one month from the date of the order appealed against and his decision shall be final.[65]

Sub-section (5) provides that if any rent-receiver fails to hand over the papers of his *sherista*, the Revenue-officer may enter upon any land or building and take possession of such papers. But he cannot enter upon any enclosed courtyard or garden attached to a holding without the consent of its inmate or occupier. If such consent is refused he may enter after giving two hours' notice in writing. The Revenue-officer shall prepare an inventory of the papers and furnish it to the rent-receiver concerned. Under sub-section (6) he is entitled to inspect such papers and to get copies of it on payment of the prescribed fees.

5.[66] Determination of rent of *khas* land of rent-receivers : As soon as may be after the publication of a notification under sub-section (1) of section 3, the Revenue-officer shall determine, according to the principles laid down in sections 23, 24, [25, 25A],[67] 26, 27 and 28, the rent of every parcel of lands in the *khas* possession of all rent-receivers specified in such notification and comprised in the estates, *taluks*, tenures, holdings or tenancies to which such notification relates.

65. Rule 11 (3) and section 7.
66. Section 5 was substituted for the former section 5 by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act XII of 1954), section 4.
67. The figures, comma and letter within square brackets were substituted for the figures "25" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958), section 6.

Note : Section 5 directs the Revenue-officer to assess the rent of *khas* lands of a rent-receiver after giving him a hearing,[68] as soon as may be after the publication of notification under section 3(1). According to the principles laid down in sections 23-28, when the rent is determined the Revenue-officer will serve a notice on the rent-receiver in Form No.V individually or he will serve a general notice in the village where *khas* lands are situated, according to the circumstances of each case as he deems fit.[69] Any person aggrieved by an order of the Revenue-officer may prefer an appeal before the superior Revenue Authority within one month from the date of service of notice and his decision shall be final.[70]

6. *Ad interim payment* : (1) A rent-receiver, whose interests in any estate, [*taluk*, tenure, holding or tenancy][71] are acquired under sub-section (1) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect of such interests, at such time and in such manner as may be prescribed, an *ad interim* payment at the rate of one-third of the net income on account of the demands of rent and cesses for any period after the notified date collected from such estate, [*taluk*, tenure, holding or tenancy],[71] as the case may be, in respect of such interests in the year to which such payment relates.

(2) A rent-receiver, whose *khas* land is acquired under sub-section (2) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect of such land, at such time and in such manner as may be prescribed, an *ad interim* payment at the rate of five *per centum* of the amount of compensation payable for such land under sub-section (1) of section 39 and the provisions of sub-section (2), (3) and (4) of that section shall apply *mutatis mutandis* in the matter of determination of such amount.

68. Rule 7(1)
69. Rule 7(2)
70. Rule 11 (3) and Section 7 of the Act.
71. See foot-note 10 on page 22.

(3) For the purposes of sub-section (1), the net income from any estate, [*taluk*, tenure, holding or tenancy][71] for any year shall be computed by deducting from the gross collections made by the Provincial Government in such year from such estate, [*taluk*, tenure, holding or tenancy][71] on account of the demands of rents and cesses for any period after the notified date due to the interests acquired under sub-section (1) of section 3, the following :—

(i) an amount equivalent to the sums which were or are determined to have been payable annually for such interests immediately before the notified date on account of revenue or rent and cesses to the Provincial Government or to the immediate superior landlord, as the case may be;

(ii) an amount equivalent to the amount of the taxes on such collections that would have been assessable, at the average rates, under the Bengal Agricultural Income Tax Act, 1944, or the Income-tax Act, 1922, had not the provisions of section 3 been applied;[72]

(iii) the expenditure, if any, incurred for the maintenance of any irrigation or protective works in such estate, [taluk, tenure, holding or tenancy][71] if the outgoing rent-receiver was legally bound to maintain them; and

(iv) collection charges not exceeding twenty *per centum* of the gross collections.

Explanation.[73]—In this sub-section, "average rates" mean the average rates of taxes at which assessment was made for the last time, before the notified date, under the provisions of

72. Clause *(ii)* was substituted for the original clause *(ii)* by E. B. Act VI of 1952, S. 8. The original clause *(ii)* ran as follows :— "*(ii)* an amount equivalent to the amount of the tax that would have been payable under the Bengal Agricultural Income-tax Act, 1944, or the Income-tax Act, 1922, in respect of such collections, had not the provisions of section 3 been applied."

73. The Explanation was added by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952) S.8.

the Bengal Agricultural Income-tax Act, 1944, or the Income-tax Act, 1922.

(4) In determining the amounts of deductions under sub-section (3), the Revenue-officer shall be guided by such rules as may be made in this behalf by the Provincial Government.

(4a)[74] Notwithstanding anything contained in sub-sections (1), (3) and (4), the Provincial Government may pay to any such rent-receiver in cash, at such time and in such manner as may be prescribed, a sum, in lieu of *ad interim* payment, provided for in sub-section (1), calculated at the rate of one-sixth of the net income of such interest determined under section 35 or section 36, as the case may be, in the Compensation Assessment-roll finally published under section 42, subject to modification, if any, under section 54, for each year of which *ad interim* payment is due to him under sub-section (1) but not paid under that sub-section.

(5)[75] Nothing in this section shall apply to any estate, *taluk*, tenure, holding, tenancy or land held under *wakf*, *wakf-alal-aulad*, *debutter* or any other trust.

Note : To mitigate the financial stringency of a rent-receiver an *ad interim* payment is allowed to him under this section. It is likely that he might have faced pecuniary difficulty owing to the acquisition of his estates, *taluks*, tenures and *khas* lands. Such payment shall be adjusted against the compensation money payable to him.

Under sub-section (1) a rent-receiver will receive annually in cash an *ad interim* payment at the rate of one-third of the net income from the collection of rent and cesses from the acquired estates, *taluks*, holdings or tenancies. The net income is to be determined after deduction of certain items mentioned in sub-section (3).

Sub-section (2) provides for *ad interim* payment to a rent-receiver whose *khas* lands have been acquired. He will receive

74. This new sub-section was inserted by the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1961 (E. P. Ord. No.XIV of 1961, sec.3.

75. Sub-section (5) was added by the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952) Sec.8.

annually in cash an *ad interim* payment at the rate of 5 per cent of the amount of compensation payable under section 39 (1). That sub-section calculates the rate of compensation payable for different classes of lands. Under section 10 *ad interim* payment is exempted from attachment in execution of a decree other than a decree or certificate for the recovery of arrears of revenue, rent or cess due in respect of the property to which such payment relates.

Any person aggrieved by an order of the Revenue-officer determining the amount of *ad interim* payment may prefer an appeal before the superior Revenue Authority within one month from the date of service of notice and his decision shall be final.[76]

According to sub-section (3) the net income is to be determined by deducting the following items :-

(1) the amount which was payable annually on account of revenue or rent and cesses to the Provincial Government or to the intermediate superior landlord, as the case may be;[77] (2) the amount of tax that would have been assessable under the Bengal Agricultural Income-tax Act. 1944, or the Income-tax Act. 1922. [78] (3) the expenditure incurred for the maintenance of any irrigation or protection works, for which the outgoing rent-receiver was legally bound to maintain them: (4) collection charges not exceeding 20 per cent of the gross collections.[79] In determining the amount of deductions under sub-section (3) the Revenue-officer is to be guided by the rules framed under the Act. [80]

Sub-section (4a), inserted by the Bangladesh Ordinance No. XIV of 1961, provides that the Provincial Government may pay to the outgoing rent-receiver a sum in cash, in lieu of *ad interim* payment, calculated at the rate of one-sixth of the net income as determined under section 35 or section 36.

76. Rule 11(3) and section 7 of the Act.
77. Sec. Rule 9(1).
78. Sec. Rule 9(3).
79. Sec. Rule 9(4).
80. Sec. Rule 9.

Sub-section (5), inserted by the East Bengal Act VI of 1952, says that the provisions of section 6 are not applicable to any property held under a *wakf, wakf-alal-aulad, debutter* or any other trust, the reason being that the legislature has made separate provisions in section 6A for *ad interim* payments to a *mutwalli, shebait* or a trsutee.

6A.[81] *Ad interim* payment in respect of trust properties : (1) A rent-receiver, whose interest in any estate, *taluk*, tenure, holding or tenancy held under *wakf, wakf-alal-aulad, debutter* or any other trust, are acquired under sub-section (1) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect of such interests at such time and in such manner as may be prescribed, as *ad interim* payment, as follows :—

(*i*) an annuity equivalent to so much of the net income of the estate, *taluk*, tenure, holding or tenancy as has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual;

(*ii*) for the portion of the net income, if any, of the estate, *taluk*, tenure, holding or tenancy, remaining after deduction of the annuity under clause (*i*), a sum calculated at the rate of three *per centum* of the amount of compensation payable for such portion of the net income under sub-section (1) of section 37.

(2) The amount of annuity referred to in clause (*i*) of sub-section (1) shall be determined in the same manner as is prescribed for the assessment of perpetual annuity under sub-section (3) of section 37, and the provisions of sub-section (4) of section 58 and sub-section 4 of section 59 shall apply in the matter of payment of such amount.

(3) For the purpose of clause (*ii*) of sub-section (1), the net income shall be determined in the manner provided in sub-sections (3) and (4) of section 6.

81. Section 6A was inserted by me E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act. VI of 1952), Section 9.

(4)[82] A rent-receiver, whose *khas* land, held under *wakf, wakf-alal-aulad, debutter* or any other trust, is acquired under sub-section (2) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect of such land, at such time and in such manner as may be prescribed, an *ad interim payment as follows :*

(i) an annuity equivalent to so much of the net income of the land as has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual; and

(ii) for the remaining net income, if any, of the land, at the rate of three *per centum* of the amount of compensation payable for such land under sub-section (1) of section 39, and the provisions of sub-sections (2), (3) and (4) of that section shall apply *mutatis mutandis* in the matter of determination of such amount.

(5)[83] The amount of annuity referred to in clause (i) of sub-section (4) shall be determined in the same manner as is prescribed for the determination of perpetual annuity under sub-section (1*a*) of section 39 and the provisions of sub-section (4) of section 58 and sub-section (4) of section 59 shall apply in the matter of payment of such amount.

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82. Sub-section (4) was substituted for the former sub-section (4) by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord. No.XII of 1960, section 5.

The original sub-section (4) read as follows :

"(4) A rent-receiver, whose *khas* land, held under *wakf, wakf-alal-aulad, debutter* or any other trust, is acquired under sub-section (2) of section 3, shall with effect from the notified date, be entitled to receive annually in cash in respect of such land, at such time and in such manner as may be prescribed, an *ad interim* payment at the rate of three *per centum* of the amount of compensation payable for such, land under sub-section (1) of section 39 and the provision of sub-section (2), (3) and (4) of that section shall apply *mutatis mutandis* in the matter of determination of such amount."

83. Sub-section (5) was inserted by E. P. Ord. No.XII of 1960, s.5.

Note : Sub-section (1) lays own that a rent-receiver whose interest in any estate, *taluk*, tenure, holding or tenancy held under *wakf, wakf-alal-aulad, debutter* or any other trust is acquired, is entitled to receive annually in cash an *ad interim* payment. The amount varies in case of public and private trust. In case of public trust it will be given in the form of an annuity equal to so much of the net income of the interest acquired as has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual. In the case of private trust it will be given at the rate of 3 per cent of the amount of compensation payable under section 37(1).[84] The net income will be determined, under sub-section (3) of section 6A in the same manner provided in sub-sections (3) and (4) of section 6 i.e., by deducting certain items which have been considered above.

It shows that religious and charitable endowments are protected under the Act, the income being kept in tact for the smooth running of such endowments. But the pecuniary benefit which has been reserved by the creator of the *wakf* for his descendants or for himself as under the *Hanafi* Law, is completely wiped out.[85] Thus *Wakf- alal-aulad* is directly hit by the provisions of the Act. [86]

An appeal will lie against the order of the Revenue-officer determining the amount of *ad interim* payment before the superior Revenue Authority within one month from the date of service of notice and his decision shall be final.[87].

Sub-section (2) provides that the amount of annuity which will be given to a *mutwalli* or a *shebait* for running the public endowments will be determined according to the provisions of sub-section (3) of section 37. Under that sub-section compensation is to be paid in the form of a perpetual annuity equal to the net income of the interest acquired.

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84. Sec.37(1) deals with the rate of compensation for rent-receiving interest
85. *Jibendra Kishore v. Province of Bangladesh* (1957) 9 D. L. R. (S. C.). 21 at 42.
86. *Ibid.*
87. Rule 11(3) and Section 7 of the Act.

Sub-section (4), amended by the Bangladesh Ordinance No.XII of 1960, provides that a rent-receiver whose *khas* land held under *wakf*, *wakf-alal-aulad*, *debutter* or any other trust is acquired, is entitled to receive annually in cash an *ad interim* payment. The amount varies in case of public and private trust. In the case of public trust payment will be made in the form of annuity equal to so much of the net income of the land as has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual. In the case of private trust the *ad interim* payment will be given at the rate of 3 per cent of the amount of compensation payable for such land under section 39(1).

Under sub-section (5) the amount of annuity shall be determined according to the provisions of sub-section (1*a*) of section 39. Under that sub-section the compensation for the *khas* land will be assessed as a perpetual annuity equal to such annual average of the income as applied to religious or charitable purposes without reservation of pecuniary benefit for any individual.

The *ad interim* payment is exempted from attachment in execution of any *decree* of certificate for the recovery of arrears of revenue, rent or cesses due in respect of the estate, *taluk*, tenure, holding, tenancy or land to which such payment relates.[88]

7. Appeal : Any person aggrieved by an order of the Revenue-officer under sub-section (4) of [section 4 or section 5, or by an order of the Revenue-officer determining the amount of any *ad interim* payment under section 6 or section 6A][89] may, within a prescribed period and in the prescribed manner, present an appeal in writing to a prescribed superior Revenue Authority; and the decision of such Authority and

88. Sec.10

89. These words, figures, Comma and letter were substituted for the words, figures, brackets and comma "section 4, or section 5 or sub-section (1) or (2) of section 6" by the East Bengal State Acquisition and Tenancy (Amendment) Act (E. B. Act VI of 1952), section 10.

also, subject only to such decision, an order of the Revenue-officer passed under the said section and sub-sections shall be final.

8. Payment and recovery of fines imposed under this Chapter : The fine imposed under this Chapter shall be paid, by the person fined, in the prescribed manner within sixty days fom the date of the order of the Revenue-officer imposing the fine or, when an appeal is presented against such order under section 7 within sixty days from the date of the disposal of such appeal; and in default of such payment the amount of such fine shall be recoverable as a public demand under the Bengal Public Demands Recovery Act.1913.

9. Sections 9A, 9B, 9C and 9D were omitted by E. P. Act. No. VI of 1964, Section 3.

10. Exemption of *ad interim* payments from attachments : Notwithstanding anything contained in the Code of Civil Procedure, 1908, and the Bengal Public Demands Recovery Act, 1913, any amount payable to an outgoing rent-receiver under sub-section (1) of (2) of section 6 [or sub-section (1) or (4) of section 6A][90] shall not be liable to attachment in execution of any decree or order of a Civil Court or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for the recovery of arrears of revenue, rent or cesses due in respect of the estate, *taluk* [tenure, holding, tenancy or land][91] to which such payment relates.

10A.[92] Special provisions regarding certain rent-receiving interests held under *wakf*, *wakf-alal-aulad*, *debutter* or other religious trusts (1) Notwithstanding anything contained in clauses *(e)* and *(ff)* of sub-section (4) of section 3

90. The words, figures, brackets and letter within square brackets were inserted by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act, VI of 1952) section 11.

91. The words and commas within square brackets were substituted for the words "tenure or land" by section 11, *ibid.*

92. Section 10A was inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1960 (E. P. Ord. IX of 1960), s.2.

or in section 6A, the provisions of this section shall apply to the cases where the [interest of a rent-receiver],[93] held under any *wakf, wakf-alal-aulad, debutter* or other religious trust have been acquired under sub-section (1) [or sub-section (2)],[94] of section 3, but the Provincial Government have not exercised the right of possession over such interests till the date of commencement of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1960, by starting collection of rent and cesses from the tenants holding lands immediately under such interests, or by any other means.

(2)[95] On and from the date of acquisition of such interests, *the Mutwalli, Shebait* or trustee, as the case may be, holding such interests immediately before such date shall continue, and be deemed to have continued, to manage such interests as the agent of the Provincial Government till the last day of the agricultural year [in which the][96] publication of the notification under sub-section (2) of section 43 [,][97] declaring that a Compensation Assessment-roll in respect of such interests has been finally published [, is made].[98] [or till the time the Provincial Government exercise the right of possession over such interests, whichever is later].[99]

(3) Such *Mutwalli, Shebait* or trustee shall, as the agent of the Provincial Government, be entitled to collect, at the rates provided in, and subject to the provisions of, sub-section (4), all rents and cesses payable by the tenants to the Provincial

93. The words within square brackets were substituted for "rent-receiving interests" by E. P. Ord. No. IV of 1962, s.2
94. The words, brackets and figure within square brackets were inserted, *ibid.*
95. The words "rent-receiving" were omitted, by E. P. Ord. No. IV of 1962, s.2
96. The words within square brackets were substituted for the words "next following the date of." *ibid.*
97. The comma within square brackets was inserted after the words and figures "section 43", *ibid.*
98. The comma and the words within square brackets were inserted after the words "finally published." *ibid.*
99. The words within square brackets were added by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E. P. Ord. No.VIII of 1967), section 3.

Government in respect of [such interests, and to collect the usufruct of such interest in *khas* land][1] for the period from the date of acquisition of such interests till the last day of the agricultural year [or till the exercise of the right of possession, as referred to in sub-section (2), whichever is later][2] and to retain the proceeds of such collection in lieu of *ad interim* payments under section 6A [or other income][3] [in respect of such interests][4] and his remuneration, subject in payment to the Provincial Government annually, in the prescribed manner, of a sum equivalent to the total of the following amounts, namely :—

(a) the amounts which were, or are determined by the Collector to have been, payable annually for such interests immediately before acquisition on account of revenue or rent and cesses to the Provincial Government or to the immediate superior landlord, as the case may be, and

(b) the amount that would have been assessable as tax under the Bengal Agricultural Income-tax Act.1944, in respect of the income from [such interests][5] had not the [interests been acquired][6] :

Provided [7] that–

(i) no such *mutwalli, Shebait* or trustee shall be entitled to transfer, or to create any encumbrance or charge on, any such interest in any *khas* land in any manner

1. The words and commas within square brackets were substituted for the words "such rent-receiving interests," by E. P. Ord. No. IV of 1962 s.2
2. The words within square brackets were substituted for the words "as aforesaid" by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E. P. Ord. No.VIII of 1967) section 3.
3. The words within square brackets were inserted after the words "proceeds of such collections" by E. P. Ord. No. IV of 1962, s.2.
4. The words within square brackets were interested after the words, figure and letter "under section 6A," *ibid.*
5. The words within square brackets were substituted for the words "such collection", *ibid*
6. The word "rent-receiving" was omitted, *ibid*
7. The proviso was inserted, *ibid.*

otherwise than by a temporary lease, but no such temporary lease shall be given for a period exceeding one year at a time expiring on the last day of the agricultural year in which it is created, nor shall any tree be cut down or building demolished, except with the previous permission of the Collector and on such terms as the Collector may prescribe in that behalf; and any transfer or any encumbrance or charge created or any lease given in contravention of the provision thereof shall be null and void and the full value of any tree cut down or building demolished in such contravention shall be recoverable from the *Mutwalli, Shebait* or trustee as an arrear of rent or land revenue;

(ii) with effect from the 1st *Baisakh*, 1367 B. S., the amoiunt payable under clause *(a)* shall be reduced by an amount equivalent to the amount which was, or is determined by the Collector to have been, payable annually by the tenants, directly under such *Mutwalli, Shebait* or trustee, in respect of such interests immediately before acquisition on account of the road and public works cesses under the Bengal Cess Act, 1880, or on account of the local rates under the Assam Local Rates Regulation, 1879, as the case may be; and

(iii) in the cases where any such *Mutwalli, Shebait* or trustee was entitled to receive, in respect of any interest referred to in sub-section (1), immediately before the acquisition of such interest, any rent or cesses on account of any tenure, holding or tenancy either from the Provincial Government or from another rent-receiver whose interests in such tenure, holding or tenancy have been acquired and taken possession of by the Provincial Government under the provisions of this Act, such *Mutwalli, Shebait* or trustee shall be entitled to the adjustment, against his annual liability to the Provincial Government under this section, of a sum equivalent to the amount

that was, or is determined by the Collector to have been, payable to him annually on account of rent and cesses in respect of such tenure, holding or tenancy immediately before such acquisition, but no such adjustment shall be admissible with effect from the 1st *Baisakh*, 1367 B. S., on account of the road and public works cesses under the Bengal Cess Act, 1880, or on account of the local rates under the Assam Local Rates Regulation, 1879; and if the total amount available annually for such adjustment exceeds the amount of his total annual liability under this section, he shall be entitled to get the balance from the Provincial Government, after deduction at the discretion of the Provincial Government, of any other sum due from him to the Provincial Government under any law or contract.

Explanation — For the purposes of clause (b), the amoiunt may be calculated at the average rate of tax at which the assessment was made for the last time, before the date of acquisition, under the provisions of the Bengal Agricultural Income-tax Act, 1944.

(4) The tenants referred to in sub-section (3) shall, in respect of the lands held by them subject to the payment of rents immediately before acquisition, be liable to pay rents in respect of such lands at the rates determined in the record-of-rights finally published under sub-section (3) of section 19, subject to modification under section 53;

Provided that pending such final publication of the record-of-rights, the tenants shall pay rents for such lands at the rates shown in the preliminary rent-rolls prepared under the rules made under Chapter IV and in cases where such preliminary rent-rolls also have not been prepared, the tenants shall pay rents at the rate existing immediately before acquisition till such preliminary rent-rolls are prepared :

Provided further that when any such rent is shown either at an enhanced or at reduced rate in the record-of-rights finally published under sub-section (3) of section 19 or when

any such rent is enhanced or reduced under section 53, the tenant shall be liable to pay the balance or entitled to the adjustment of excess payment against future rent payable by him, as the case may be, with retrospective effect.

(5) The arrears of rent and cesses realisable by a *Mutwalli, Shebait* or trustee from a tenant under the provision of this section shall be recoverable as a public demand and the *Mutwalli, Shebait* or trustee may apply to the Certificate Officer in the prescribed manner for the recovery of any such arrears under the provisions of the Bengal Public Demands Recovery Act, 1913.

(6) The *Mutwalli, Shebait* or trustee shall pay to the Provincial Government any amount on account of excess payment of rent made by a tenant under sub-section (4) remaining outstanding after adjustment under that sub-section against the rent subsequently payable by him during the period of management by such *Mutwalli, Shebait* or trustee.

(7) All sums payable by a *Mutwalli, Shebait* or trustee to the Provincial Government under sub-section (3) or sub-section (6) shall be recoverable as a public demand.

(8) The arrears of rent and cesses recovered by the Certificate Officer under sub-section (5) shall be paid to the *Mutwalli, Shebait* or trustee concerned after deducting therefrom all sums due from him to the Provincial Government under sub-section (3) and sub-section (6).

(9) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, in computing the period of limitation for the recovery of any arrears of rent and cesses payable by a tenant under sub-section (4), a period of twenty-four months on and from the date of the acquisition of the rent-receiving interest to which such arrears relate shall be excluded.

(10) Every such *Mutwalli, Shebait* or trustee shall furnish to the Collector, in such form and at such time as may be prescribed, a statement of accounts of collection of rent and cesses made by him under this section duriong the preceding

year and of expenditure incurred by him out of such collection.

(11)[8]No Court shall entertain any suit or application by any person claiming the benefits of this section in respect of any property or for a declaration that he is entitled to any such benefit unless such person has applied to the Collector and the Collector has passed a final order declaring that he is not entitled to such benefits :

Provided that, if no such final order is passed by the Collector within a period of 3 months from the date of such application, the *Mutwalli, Shebait* or trustee, shall be entitled to bring a suit in the Civil Court after the expiry of the said period.

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8. Sub-section (11) was inserted by E. P. Ord. No.IV of 1962, s.2.

PART–III

CHAPTER –III[1]

Special Provisions regarding lands held in lieu of service.

[This Chapter is "intended to give the service tenure holders the status of occupancy-*raiyats*."[2] By section 11 a *nankar* or a *chakran* tenant has been given the right of occupancy in all his lands with effect from 16th May, 1951, the date when the Act came into force.[3] But a reservation has been made in section 12 in respect of his homestead lands.[4] Under section 13 he is entitled to be restored to possession if he has been ejected from the agricultural or horticultural land otherwise than by a decree or order of a Civil or Revenue Court. A service tenant holding land with the boundaries of a tea estate or any other indutrial organisation cannot acquire occupancy right in such land as this Chapter is not applicable to him.][5]

11. Acquisition of occupancy rights : (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, any person who holds under another person any land, for agricultural or horticultural purposes or for the purposes of his homestead, free of rent in consideration of some service to be rendered under the system locally known as *Nankar, Chakran* or the like shall, on and from the date of commencement of this Act, acquire a right of occupancy in all such lands so held by him subject to the payment of a fair and equitable rent to the person under whom he holds such lands and the provisions of the Bengal

1. As to the protection of Service Tenants from eviction and giving them the benefit of Chapter III of the E. B. State Acquisition and Tenancy Act, 1950 (E. B. Act. XXVIII of 1951). *See* the East Bengal Service Tenants (Protection) Act, 1952 (E. B. Act. IX of 1952) sections 3 and 4.
2. The report of the Special Committee dated 6th July, 1949, Ch. IB.
3. *Latif v. Manwar* (1954) 6 D. L. R. 326.
4. *Ibid.*
5. Sec.16 and Sec. 28.

Tenancy Act, 1885, or the Sylhet Tenancy Act, 1936, as the case may be, so far as they apply to occupancy-*raiyats*, shall apply to him.

(2) The fair and equitable rent, referred to in sub-section (1), shall mean such rent not exceeding the prevailing rate of rent paid by the occupancy-*raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages as may be agreed upon between such tenant and his landlord or, in the absence of such agreement, as may be determined by the Collector on the application of such tenant or the landlord.

Note : Sub-section (1) provides that any person who holds any land for agricultural or horticultural purposes, or for the purposes of homestead, free of rent in consideration of some service to be rendered under the system known as *nankar, chakran* or the like, shall acquire a right of occupancy in such lands from the 16th May, 1951, the date when the Act came into force. As this section has no retrospective effect it cannot give any relief in respect of suits for ejectment or proceedings instituted before the Act came into force.[6] Section 3 of the East Bengal Service Tenant (Protection) Ordinance, 1952 was designed to give protection from such suits or proceedings.[7] That Ordinance came into force on the 6th April, 1952, but was subsequently repealed by the East Bengal Service Tenants (Protection) Act, 1952 which came into force on the 5th of November of that year. Section 3 of that Act is similar to section 3 of the Ordinance. It states as follows :—

"Notwithstanding anything contained in any other law for the time being in force, no Civil Court shall, after the coming into force of this Act, entertain any application for execution of a decree for ejectment of a service tenant or other proceedings relating thereto, and such application or proceedings as also any suit for ejectment of such tenant, if pending before a Civil Court, shall not be further proceeded with and shall abate."

6. *Latif v. Manwar* (1954) 6 D. L. R. 326.
7. *Ibid.*

If a *nankar or chakran* tenant has been ejected after the 7th April, 1948, otherwise than by a decree or order of a Civil Court or by an order of the Collector or of any Revenue Court, from any agricultural or horticultural land, he may, within 6 months from the date of commencement of this Act, apply to the Collector for restoration of possession.[8] If he is not given possession, the Collector will place him in possession of the land.[9]

Persons holding land free of rent in consideration of some service within the boundaries of a tea estate or any other industrial organization will not acquire occupancy right in such lands as this Chapter does not apply to them. [10]

A service tenant will acquire occupancy right in the holding subject to the payment of fair and equitable rent to the person under whom he holds the land and the provisions of the Bengal Tenancy Act, 1885, or the Sylhet Tenancy Act, 1936, as the case may be, shall apply to him so far as they apply to occupancy-*raiyats*.

Under sub-section (2) a fair and equitable rent means such rent not exceeding the prevailing rate of tent paid by the occupancy-*raiyats* for lands of a similar description and with similar advantages in the village or in the neighbouring villages as may be agreed upon between such tenant and his landlord. In the absence of such an agreement, he will pay such rent as may be determined by the Collector on the application of such tenant or by his landlord. The Collector will determine the rent after giving to the parties.[11]

Any person who is aggrieved by an order of the Collector may prefer an appeal to the District Judge having jurisdiction over the area within 30 days from the date of such order and his decision shall be final.[12]

8. Sec. 13 (i)
9. Sec. 13 (3)
10. Sec. 16 and Sec. 28.
11. Rule 14
12. Sec. 14

12. Removal of the homestead of a tenant in certain cases :

(1) Notwithstanding anything contained in section 11, where such tenant has his homestead within the homestead of his landlord, either he or the landlord may, [within six months from the date of commencement of this Act][13] apply to the Civil Court having jurisdiction to entertain a suit for the possession of such land, for an order directing the removal of the homestead of such tenant.

(2) When an application is made under sub-section (1), the Court, after giving the parties an opportunity of being heard and after taking such evidence and making such enquiries as it thinks fit, if satisfied that the homestead of the tenant is situated within the homestead of the landlord, shall make the order applied for :

Provided that the Court, if it finds that the total quantity of cultivable land held by such tenant as an occupancy-*raiyat*, whether by virtue of section 11 or otherwise, besides the homestead to which the application relates, is less than five standard *bighas* , shall assess such reasonable compensation to be paid to such tenant by the landlord as would, in the opinion of the Court, cover the cost of removal of the homestead of the tenant to a new site, the cost of reconstruction of a similar homestead, the cost of the land required for such construction and such other incidental expenses as the Court thinks fit; and it shall not make an order for such removal until the landlord deposits in the Court the amount of compensation so assessed for payment to the tenant, or the tenant admits before the Court in writing that he has received the amount from the land-lord out of Court.

13. For the purpose of sub-section (1) of section 4 of the East Bengal Service Tenants (Protection) Act. 1952 (E. B. Act. IX of 1952), the expression "within six months from the date of commencement of this Act" shall be deemed to have been substituted by the expression "within three months from the date of commencement of the East Bengal Service Tenants (Protection) Act, 1952."

(3) An order under sub-section (2) shall be deemed to be a decree for ejectment against such tenant: and no appeal shall lie against such order.

Note : Section 12 lays down rules for the guidance of the Court in passing an order for removal of the homestead of a service tenant from the homestead of his landlord. Under sub-section (1) where such a tenant has his homestead within the homestead of his landlord, either he or his landlord may, within six months from the date of commencement of the Act, apply to the Civil Court for such an order. Section 3 of the East Bengal Service Tenant (Protection) Ordiance, mentioned above cannot be attracted as that section does not refer to such a proceeding.[14] The proceedings affected by that section are applications for execution of a decree for ejectment or other proceedings relating thereto or a suit for ejectment. An application by the landlord under section 12 is neither an application for execution of a decree for ejectment nor is it a suit for ejectment.[15]

Under sub-section (2) the Court should make an order for removal of the homestead on being satisfied that the homestead of his landlord. The Court should come to such a finding after giving the parties an opportunity of being heard and after taking such evidence and making such enquiries as it thinks fit. If it finds that the total quantity of cultivable land held by such tenant, besides his homestead, is less than five standard *bighas*, it will assess such reasonable compensation to be paid by the landlord to the tenant as would cover the cost of removal of the homestead to a new site, the cost of reconstruction of a similar homestead, the cost of land required for construction and such other incidental expenses as it thinks fit. The Court has also been directed not to make an order for removal of the homestead until the landlord deposits the amount of compensation in the Court, or the tenant admits in writing before the Court that he has received the amount from the landlord out of

14. *Latif v. Manwar* (1954) 6 D. L. R. 326.
15. *Ibid.*

Court. Under sub-section (3) the order for removal of the homestead shall be deemed to be a decree for ejectment against the tenant and no appeal shall lie against such order.

13. **Restoration of agricultural land in certain cases :** (1) If a person has been ejected after the 7th day of April, 1948, otherwise than by a decree or order of a Civil Court or an order of the Collector or of any Revenue-officer empowered by the Collector, from any agricultural or horticultural land held by him free of rent in consideration of some service to be rendered under any system referred to in sub-section (1) of section 11, such person may, within six months from the date of commencement of this Act, apply to the Collector for the restoration of such land to him.

(2) When an application has been made under sub-section (1), the Collector, after giving the parties an opportunity of being heard and taking such evidence and making such enquiries as he thinks fit, if satisfied that the applicant was so ejected after the said date from such land so held by him, shall pass an order restoring such land to the applicant with effect from such date not being later than the first day of the agricultural year next following the date of the order as the Collector thinks fit.

(3) If the person in possession of such land does not give up its possession to the applicant with effect from such date, the Collector shall, on the application of such applicant, eject such person and place such applicant in possession of such land;

Provided if such person be a person other than the landlord, he shall get reasonable compensation, as determined by the Collector, from the landlord.

(4) When any agricultural or horticultural land is restored to a person under this section, the provisions of section 11 shall apply to such land.

14. **Appeal :** Any person who is aggrieved by an order of the Collector under sub-section (2) of section 11 or under sub-section (2) of section 13, may prefer an appeal to the District Judge having jurisdiction over the area within thirty days

from the date of such order; and the decision of the District Judge having jurisdiction over the area, on such appeal, shall be final.

15. Miscellaneous : An application under sub-section (2) of section 11, sub-section (1) of section 12 or sub-section (1) of section 13 shall be in such form and contain such particulars as may be prescribed, and shall be accompanied by a process fee of the prescribed amount.

16. Saving as to certain lands : Nothiong in this Chapter shall apply to any land held within the boundaries of a ten estate or any other industrial organisation.

PART–IV

CHAPTER–IV

Preparation of Record-of-rights

[This Chapter contain provisions for preparation of record-of-rights with a view to assessment of compensation regarding interests of all rent-receivers which are liable to be acquired and which have already been acquired under Chapter II of the Act. Section 17 empowers the Provincial Government to make an order directing that the record-of-rights be prepared or revised. Under section 18 the Revenue-officers are to record certain particulars in the record-of-rights. Under section 19 they are to prepare the draft as well as final publication of such records. Section 20 prescribes the quantum of land which can be retained by a person in his possession. Section 21 and 22 provide that all lands are subject to payment of fair and equitable rent as determined by the Revenue-officer in accordance with the provisions of this Chapter and the rent so determined shall be entered in the record-of-rights. Sections 23-28 direct the Revenue-officer to assess fair and equitable rents for different classes of tenants. By reason of section 29 the rents entered in the record-of-rights shall be deemed to have been correctly determined and to be fair and equitable. Section 30 ousts the jurisdiction of the Civil Court to entertain any suit or application for alteration of rent or determination of the status of any tenant or the incidents of any holding or tenancy, after an order has been made under section 17 directing the preparation of record-of-rights. Under section 31 the Provincial Government may, instead of proceeding under section 17, order that a compensation assessment-roll be prepared under Chapter V on the basis of the record-of-rights last prepared and finally published under the Bengal Tenancy Act, 1885, of the Sylhet Tenancy Act, 1936.]

17. Preparation of record-of-rights : (1) The Provincial Government may, with a view to acquisition under the provisions of this Act of the interests of all rent-receivers

within any district, part of a district or local area and of such other interests in land therein as are liable to be acquired under the provisions of this Act, and with a view to the assessment of compensation payable for all such interests including the interest which have already been acquired under Chapter II, make an order directing —

(a) that a record-of-rights be prepared in respect of such district, part of a district or local area, or

(b) that the record-of-rights, last prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, in respect of such district, part of a district or local area, be revised,

by a Revenue-officer in accordance with the provisions of this Chapter and with such rules as may be made in this behalf by the Provincial Government.

(2) If any order has been made under section 101 of the Bengal Tenancy Act, 1885, [or under section 117] of the Sylhet Tenancy Act, 1936,][1] for the preparation of a record-of-rights in respect of any district, part of a district or local area, but the preparation of such record-of-rights has not been completed or such record-of-rights has not been finally published at the time when an order is made under sub-section (1) for the preparation or revision of a record-of-rights in respect of such district, part or area, then on the making of an order under the said sub-section, all further proceedings relating to the preparation of the record-of-rights under the said Act shall be stayed; and such record-of-rights shall be prepared in accordance with the provisions of this Chapter and with such rules as may be made in this behalf by the Provincial Government :

Provided that any proceedings in respect of the preparation of such record-of-rights commenced under Chapter X of the Bengal Tenancy Act, 1885, [or under Chapter

1. The words, commas and figures within square brackets were inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ord. III of 1956), Section 6.

IX of the Sylhet Tenancy Act" 1936],[2] and undertaken prior to the publication of the draft of such record-of-rights under section 103A of the [Bengal Tenancy Act, 1885, or under section 119 of the Sylhet Tenancy Act, 1936, as the case may be],[3] shall, for the purposes of the preparation of such record-of-rights under this Chapter, be deemed to have been commenced and undertaken under this Chapter.

(3) A notification in the *official Gazette* of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

Note : Sub-section (1) has empowered the Provincial Government to make an order for preparation of record-of-rights in a district, part of a district or local area, and (2) for revision of record-of-rights which was prepared and finally published under the provisions of the Bengal Tenancy Act, 1885. This was intended (a) with a view to acquisition of the interests of all rent-receivers and of such other interests in land as are liable to be acquired under the provisions of the Act, and (b) with a view to assessment of compensation payable for all such interests including the interests which have already been acquired under section 3 of the Act.

Sub-section (2) provides that if any order has been made under section 101 of the Bengal Tenancy Act, 1885, or under section 117 of the Sylhet Tenancy Act, 1936, for preparation of record-of-rights in respect of any district, part of a district or local area, but the preparation of such record-of-rights has not been completed or such record-of-rights has not been finally published when the order is made under sub-section (1), then on the making of such an order, all further proceedings relating to the preparation of the record-of-rights under those Acts shall be stayed; and such record-of-rights shall be prepared in accordance with the provisions of this Chapter and with such rules as may be made in this behalf by

2. The words, comma and figures within square brackets were inserted by E. B. Ord. III of 1956, section 6.
3. The words, commas and figures within square brackets were substituted for the words "and Act" by section 6, *ibid.*

the Provincial Goverment.[4] It is further provided that if any proceedings have been undertaken under the provisions of the Bengal Tenancy Act, 1885 or the Sylhet Tenancy Act, 1936, it will be deemed to have been undertaken under this Chapter.

The notification contemplated under sub-section (3) is a notification giving notice of the intention of Government to take up the preparation of new record-of-rights for the assessment of compensation payable for the interests acquired under the Act.[5] Such a notification shall be conclusive evidence that the order has been made for the preparation or revision of record-of-rights.

18. Particulars to be recorded in the record-of-rights : When an order is made under section 17, the Revenue-officer shall record in the record-of-rights, to be prepared or revised in pursuance of such order, such particulars as may be prescribed.

19. Draft and final publication of the record-of-rights : (1) When a record-of-rights has been prepared or revised so as to contain or include therein the particulars referred to in section 18, the Revenue-officer shall publish a draft of the record-of-rights so prepared or revised in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication.

(2) Any person aggrieved by an order passed by the Revenue-officer on any objection made under sub-section (1) may appeal to the prescribed Revenue Authority not below the rank of an Assistant Settlement Officer in such manner and within such period as may be prescribed.

(3) When all such objections and appeals have been considered and disposed of according to such rules as the Provincial Government may make in this behalf, the

4. See rule 19.
5. *Province of Bangladesh v. Md. Hossain* (1964) 16 D. L. R. (S.C.) 667.

Revenue-officer shall finally frame the record and shall cause such record to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly prepared or revised under this Chapter.

(4) When a record-of-rights has been finally published under sub-section (3), the Revenue-officer shall, within such time as the Board of Revenue may fix in this behalf, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.

Note : Section 19 deals with publication of the record-of-rights. Sub-section (1) provides that when a record-of-rights has been prepared or revised, the Revenue-officer shall publish a draft of it. He will also dispose of objections relating to any entry therein or any omission therefrom during the period of such publication. The rules for publication of the draft record-of-rights and disposal of objections have been provided in rules 31 and 32.

Under sub-section (2) of this section an appeal will lie against an order of the Revenue-officer to the prescribed Revenue Authority not below the rank of Assistant Settlement Officer. Under section 53, further appeal will lie against his order to the Special Judge and therefrom to the High Court under section 115 of the Civil Procedure Code, 1908.[6] In the case of *Abdul Mannan v. Mafizuddin,*[7] the Special Judge held that the Assistant Settlement Officer in disposing of an appeal under section 19(2) passed a wrong order and directed the party affected by it to seek relief in a competent Court. This is perfectly a legal order.[8] The decision of the Revenue Authority is not operative against a person who was not a party to the proceedng.[9] It was held that the Revenue Authority has no power to declare a *kabala* void[10]

6. *Abdul Mannan v. Mafizuddin* (1958) 10 D. L. R. 527.
7. *Ibid.*
8. *Ibid.*
9. *Mafizur Rahman v. Province of Bangladesh* (1961) 13 D. L. R. 538.
10. *A. Noor v. Province of Bangladesh* (1966) 18 D. L. R. 666.

because a Revenue-officer acting under section 19(1) is not a Court.[11]

Sub-section (3) speaks of final publication of the record-of-rights. It says that when all objections and appeals are disposed of, the Revenue-officer shall finally publish the record-of-rights. In doing so he is to follow certain rules.[12] The finally published record is conclusive evidence that the record has been duly prepared or revised under this Chapter. But it is not conclusive evidence of the state of things appearing in the record-of-rights. In other words it is not conclusive evidence of correctness of the entries in the record-of-rights. It is just a piece of evidence as any other evidence without any presumption of correctness. The presumption attaching to the record-of-rights prepared under the Bengal Tenancy Act, 1885 in view of section 103B, sub-section (5) does not attach to records prepared under this Act.[13]

Under sub-section (4) he is to make a certificate stating the facts of final publication of record-of-rights and the date thereof. He will also give his name with designation and date.

It may be observed that this is the most important provision of the Act. The legislature believed that under section 19 of the record-of-rights will be prepared without any fault whatsoever in this part of Pakistan as was done under the British Administration at the beginning of this century. But this benevolent intention was frustrated. The working of the Act cannot be said to be satisfactory. The record-of-rights has become faulty and confusing; one man's land has been recorded with another. This has led to disappointment and frustration within the country. The tenants have been involved in disputes and litigations. Besides, it has created difficulties to examine the titles. Relying upon the record-of-rights persons purchase lands; ultimately when it transpires that they have acquired defective title they loose both land and money. In order to solve this vexed problem, we should

11. *Md. Kafiluddin v. the State* (1962) 14 D.L.R. 425.
12. See rule 35.
13. *Khirod Chandra Das. v. Bhuti Ram Das* (1967) 19 D. L. R. 9

start *tabula rasa*. It is necessary to acquire all lands within this province and re-allot. to persons really interested in agriculture. This is the only measure that can bring peace within the society. The record-of-rights will be correct and upto date. The farmers will get economic holding *on block*. It will remove fragmentation of holdings. The farmers will get the opportunity for intensive and mechanised cultivation.

Evidentiary value of the record-of-rights : A record-of-rights is only a rebuttable piece of evidence. An entry in such records neither creates nor extinguishes any right.[14] When a record-of-rights is prepared on the basis of possession, it remains as a piece of evidence with a presumption of correctness attached to it.[15] A record-of-rights by itself does not furnish any evidence on the question of title but it is proof of title in so far as title is based on possession.[16] If, however, the entry is *prima facie* baseless, no reliance can be placed upon it.[17]

Weight of evidence of the record-of-rights : The entry in the record-of-rights is presumptive evidence as to the condition of things which existed at the time the record was prepared. Such records are prepared with considerable difficulty and the proceedings of the revenue-officers are conducted with publicity. If the entries in such records are lightly disregarded, the very object of its preparation will be frustrated.

How the presumption is rebutted : The presumption arising out of the record-of-rights may be rebutted, and the entry may be proved by evidence to be incorrect. This evidence may be either evidence external to the settlement proceedings or evidence of matters apparent on the face of the proceedings. It may be anterior in point of time or subsequent in date to the

14. *Keshab v. Madan* (1935) 40 C. W. N. 22 at 26.
15. *Ibid* 24.
16. *Duncan v. Radha* (1935) 62 C. L. J. 10 at 16; *Shaik Ahmed v. Sultan Ahmed* (1939) 71 C. L. J. 100.
17. *Shaik Ahmed v. Sultan Ahmed* (1939) 71 C. L. J. 100 at 102.

record-of-rights.[18] If the question arises as to whether the entry in the record-of-rights was correct at the time when it was made, evidence of facts of a date prior to the publication of the record must be admissible, although the evidence of facts subsequent to the publication may also throw an important light upon the solution of the problem.[19]

20. Lands to be retained in the possession of rent-receivers, cultivating *raiyats*, cultivating under-*raiyats* and non-agricultural tenants : (1) On the acquisition of the interests of rent-receivers in any area under Chapter V, no rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant shall be entitled to retain possession of any of his *khas* lands in such area except as provided in sub-section (2).

(2) A rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat*, or a non-agricultural tenant shall be entitled to retain, as a tenant under the Provincial Government, possession of—

(a) lands covered by his homestead or any other building belonging to him with necessary adjuncts thereto, other than such building or part of a building outside his homestead as is used primarily as office or *cutchery* for the collection of rents of any estate, *taluk* or tenure and may be decided to be acquired by the Provincial Government;

(b) land in his *khas* possession of the following classes [other than derelict tea gardens],[20] namely :—

(i) lands used for agricultural or horticultural purposes including tanks.

(ii) lands which are cultivable or which are capable of cultivation on reclamation, and

(iii) vacant non-agricultural lands;

18. Ramnath v. Official Trustee (1923) 29 C. W. N. 517 at 520.
19. *Birendra v. Kailas* (1914) 22 C. L. J. 140 at 142.
20. These words were inserted by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. No. XV of 1961), s.4

Provided[21] that the aggregate quantity of all lands of the classes referred to in clauses (a) and (b) in the whole of the province so retained in possession by a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant shall not exceed three hundred and seventy-five standard *bighas* or an area determined by calculating at the rate of ten standard *bighas* for each member of his family, whichever is greater.

(2a)[22] Notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court lands of the classes referred to in the clauses (a) and (b) of sub-section (2) do not include and shall be deemed never to have included —

(i) any land or building in a *hat* or *bazar*, or,

(ii) any fishery other than a tank constructed solely by process of excavation, or,

(iii) any land consisting of forest, or,

(iv) any land actually in use for a ferry.

(3) Allotments of lands, of which a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant is entitled to retain possession under clause (b) of sub-section (2), shall be made by the Revenue-officer according to the choice of such rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant or, where no such choice is exercised within a prescribed period, according to the rules to be made in this behalf by the Provincial Government :

21. This proviso was substituted for the former proviso by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. No. XV of 1961), section 4.
22. sub-section (2a) was substituted for the explanation by the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord. No. XII of 1960, section 6.
The explanation read as follows :—
"For the purpose of clause (a) lands covered by building do not include *hats or bazars*".

Provided[23] that in exercising such choice, such rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant shall retain the entire area of land held by each of the other members of his family if it is ten standard *bighas* or less and to the extent of at least ten standard *bighas* if it exceeds that quantity and that in allotting lands to a family, the Revenue-officer shall record them in the names of the persons who actually hold them :

Provided[24] further that when a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant or any member of his family has mortgaged any land to the Agricultural Development finance Corporation established under the Agricultural Development Finance Corporation Act, 1952, or to the House Building Finance Corporation established under the House Building Finance Corporation Act, 1952, or to the Agricultural Bank of Pakistan established under the Agricultural Bank Act, 1957, he shall, when exercising choice under this section, be bound to include in his choice all lands, so mortgaged, of the classes and up to the limit he is entitled to retain under sub-section (2) and when such a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant has already exercised his choice under this section, but no Compensation Assessment-roll in respect of his excess *khas* land has been fianlly published, he shall be required to revise his choice in accordance with the provisions of this proviso.

(4) Notwithstanding anything contained in sub-section (2), a rent-receiver, a cultivating *raiyat* or a cultivating under-*raiyat* or a group of rent-receivers, cultivating *raiyat* or cultivating under-*raiyats* who has or have undertaken large scale farming on a co-operative basis or otherwise by the use of power driven mechanical appliances, or large scale dairy

23. The proviso was added by the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No. XLIV of 1958), section 8.

24. This further proviso was Added by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1959 (E. P. Ord. No. XXXIX of 1959), Section 4.

farming may, if he is or they are certified in that behalf by the prescribed Revenue Authority, retain possession of and hold such quantity of lands in excess of the limit specified in the said sub-section as may be specified in the certificate granted by such Revenue Authority:

Provided that such a cetificate shall be subject to revisions by the said Revenue Authority at such intervals as may be fixed in this behalf by the Provincial Government.

(4A)[25] Notwithstanding anything contained in sub-section (2), a person or persons holding land for the purposes of the cultivation and manufacture of tea or coffee or the cultivation of rubber or a company holding land for the cultivation of sugarcane for the purpose of manufacture of sugar by that company may, if he or it is or they are certified in that behalf by the prescribed Revenue Authority, retain possession of and hold such quantity of land in excess of the limit specified in the said sub-section as may be specified in the certificate granted by such Revenue Authority :

Provided that such a certificate shall be subject to revisions by the said Revenue Authority at such intervals as may be fixed in this behalf by the Provincial Government :

Provided[26] further that for the purpose of this sub-section, a derelict tea garden shall not be deemed to be land held for the purpose of the cultivation and manufacture of tea.

(5) (i) Nothing in sub-sections (1), (2) and (3) of this section shall apply—

27 * * *

(b) to any land covered by buildings or structures and necessary adjuncts thereto as are used for the purpose

25. Sub-section (4A) was inserted, by the E. P. Ord. No. XXXIX of 1959, Section 4.

26. The full-stop at the end of sub-section (4A) was substituted by a colon and this further proviso was added by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. No. XV of 1961) Section 4.

27. Sub-clause (a) of clause(i) of sub-section (5) of section 20 was omitted, *ibid*.

of any large scale industry with such other lands as are used for growing raw materials therefor, or

(c) to so much of the lands held under *debutter, wakf, wakf-alal-aulad* or any other trust as is exclusively dedicated and the income from which is exclusively applied to religious or charitable purpose within reservation of pecuniary benefit for any individual.

(ii) Where, under any *debutter, wakf, wakf-alal-aulad* or any other trust, the income from the lands covered by such trust is partly dedicated for religious or charitable purposes and partly reserved for the pecuniary benefit of any individual, only such portion of the lands, as may be selected in accordance with the rules to be made in this behalf by the Provincial Government, shall come within the purview of sub-clause (c) of clause (i).

Explanation—For the purposes of sub-section (2) of this section—

(a) a rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant shall be deemed to include a group of them who are members of the same family; and

(b) a family shall, when used in relation to a rent-receiver, cultivating-*raiyat*, cultivating under-*raiyat*, or nonagricultural tenant, be deemed to consist of such rentreceiver, cultivating *riyat*, cultivating under-*raiyat* or nonagricultural tenant and all persons living in the same mess with and dependent upon such rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant, but does not include any servant or hired labourer living in the same mess.

(6)[28]The provisions of sub-clause *(c)* of clause *(i)* of subsection (5) and clause *(ii)* of that sub-section shall not

28. Sub-section (6) was added by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ordinance No. XII of 1960, Section 6.

apply and be deemed never to have applied to any land on which *hats* or *bazars* are held or which consists of forests or fisheries or ferries.

Note : Section 20 prescribes the quantity of land that can be retained by a rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant. According to the proviso to sub-section (2) such a tenant is entitled to retain under the Provincial Government 375 standard *bighas* or an area determined by calculating at the rate of 10 standard *bighas* for each member of his family, whichever is greater. The retainable area of the land under section 20 (2) of the Act was raised from 100 *bighas* to 375 *bighas* by the Bangladesh Ordinance No. XV of 1961 and it was further provided that where the Government had acquired all the lands beyond 100 *bighas*, the original tenant could get re-settlement of the lands which were acquired to enable him to retain 375 *bighas*. The Board of Revenue, however, issued memorandum No.1515(22) A.R. 453/60 whereby re-settlement of lands acquired by the Government was limited to persons who are citizens of Pakistan. The memo contains a policy decision of the Government. The claim for re-settlement must be on the basis of the memo by the Board of Revenue.[29]

The allotment of land will be made by the Revenue-officer according to the choice of the tenant.[30] He must retain the lands already mortgaged by him.[31] Where no choice is exercised by him within one month of the service of notice after the revision of record-of-rights,[32] the Revenue-officer will allot the lands up to the quantity admissible under this section. He may revise his choice if no compensation assessment roll in respect of his excess *khas* land has been finally published.[33]

29. *Surendra v. Member, Board of Revenue* (1965) 18 D. L. R. 164.
30. Sec. 20 (3)
31. Proviso to sub-section (3) of s. c. 20.
32. Rule 27.
33. Proviso to sub-section (3) of section 20.

Under the scheme of the Act individual rent-receivers, cultivating *raiyats*, cultivating under-*raiyats*, and non-agricultural tenants are dealt with as distinct units. If it is found that the land is the separate property of the wife, then her claim cannot be defeated on the ground that she also happens to be a member of her husband.[34] She is entitled to retain the full quantum of land allowed under the proviso to section 20(2) *(b)* in her individual right, even though her husband in his own right, received the benefit of the proviso retaining in his share the full quantum of land under the proviso.[35] This section is not directed to regulate or to control family proprietorship.[36]

In the case of *Mofizur Rahman, v. Province of Bangladesh*,[37] the Revenue Authority started proceedings under section 20(1) of the Act against the father for the acquisition of lands which he cannot retain under the provisions of the Act and in doing so they included the lands in possession of the son on the ground that those lands also belong to the father, the son being merely a *benamdar* of the father. The father and the son lived in two separate villages and lands were recorded in possession of both separately in the record-of-rights. The son as plaintiff brought a declaratory suit against the order of the Reveue Authority praying that it is illegal, void and without jurisdiction. It was contended on behalf of the Government that the suit was not maintainable in view of the provisions of section 19 (3) and section 30 of the Act. It was held that the plaintiff is not bound by the proceedings started against his father as he is not a party to the proceedings and in the absence of evidence that the plaintiff was aware of the preparation of record-of-rights the contention that the present suit is barred under section 19(3) or 30 of the Act is not tenable.

A rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant may be allowed to retain

34. *Province of Bangladesh v. Biroju Sundari* (1966) 18 D. L. R. 554.
35. *Ibid.*
36. *Ibid.*
37. (1961) 13 D. L. R. 538.

land in excess of the prescribed limit on the basis of a certificate granted by Revenue Authority in the following cases :—(1) when he has undertaken large scale farming on a co-operative basis or otherwise by the use of power-driven mechanical appliances; or large scale dairy farming,[38] or (2) when a person holds land for the purpose of cultivation and manufacture of tea, coffee or rubber or (3) when a company holds land for cultivation of sugarcane for manufacturing sugar,[39] or (4) when raw materials are grown by a large scale industry.[40] Sub-section (2) of section 20 specifies the types of buildings and classes of land that a rent-receiver, cultivating raiyat, cultivating under-*raiyat* or a non-agricultural tenant may retain. Clause (a) of that sub-section exempts homestead buildings from acquisition. It declares that such a tenant can retain lands covered by his homestead or any other building belonging to him with necessary adjuncts thereto, other than such building or part of a building outside his homestead as is used primarily as office or *cutchery* for the collection of rents of any estate, *taluk* or tenure. The right of a rent-receiver to retain the *cutchery* against a vesting notification under section 3 is not lost unless it is expressly acquired by the Provincial Government. Unless a decision to acquire a *cutchery* is made by the Government, the rent-receiver to whom it appertains has a right to retain it as a tenant under the Government.[41] The decision must be that of the Provincial Government and not of the Deputy Commissioner or officers subordinate to them.[42] Acquisition of a *cutchery* by the Government must be published, otherwise it comes within the category of retainable *khas* lands.[43] It is not

38. Sec. 20 (4).
39. Sec. 20 (4A).
40. Sec. 20 (5) *(i)* *(b)*.
41. *Secretary, Revenue Department v. Ibrahim Mandal* (1964) 16 D. L. R. (S. C.)125; *Md. Ibrahim v. S. D. O. Natore* (1962) 15 D.L. R. 703; *Gokul v. S.D.O. Narayanganj* (1962) 15 D. L. R. 62.
42. *Md. Ibrahim v. S. D. O. Natore* (1962) 15 D. L. R. 703.
43. *Gokul v. S. D. O. Narayanganj* (1962) 15 D. L. R. 62.

necessary to issue a fresh notification under section 3(2) for acquiring a *cutchery*.[44]

Clause *(b)* enumerates three classes of lands that may be retained by a tenant, *viz.*,

(1) lands used for agricultural or horticultural purposes including tanks; (2) lands which are cultivable or which are capable of cultivation on reclamation; (3) vacant non-agricultural lands.

A rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or a non-agricultural tenant cannot retain the following classes of lands :—

(a) any land or building in a *hat* or *bazar*.

(b) any fishery other than a tank constructed solely by process of excavation.

(c) any land consisting of forest,

(d) any land actually in use for a ferry,

(e) any building or part of a building outside his homestead as is used primarily as office or *cutchery* for the collection of rents of any estate, *taluk*, or tenure—if decided to be acquired by the Provincial Government,

(f) derelict tea gardens.

We shall now proceed to deal with *hats* and *bazars*. Under section 2(12) a *hat* or a *bazar* means "any place where persons assemble daily or on particular days in a week primarily for the purposes of buying or selling agricultural or horticultural produce, livestock, poultry, hides, skins, meat, fish, egg, milk, milk-products or any other articles of food or drink or other necessaries of life, and includes all shops of such articles or manufactured articles within such place." The decisions are not uniform as to whether a *hat* or a *bazar* is acquirable under the provisions of the Act. In the case of *Mohar Ali v. Province of Bangladesh*,[45] it was held that the Provincial Government has no right to acquire, by virtue of notification No.4845 L. R. dated 2nd April, 1956, the *hats* owned and possessed by

44. *Secretary, Revenue Department v. Ibrahim Mandal* (1964) 16 D. L.R. (S. C) 125.
45. (1957) 9 D. L. R. 569

persons who are not rent-receivers. In the case of *Yusuf Ali Chowdhury v. Province of Bangladesh*,[46] the learned Judges of the High Court of East Paksitan held that the Government is entitled to acquire the *hat* and *bazar* of a rent-receiver. Against this ruling an appeal was preferred to the Supreme Court of Pakistan. It was held[47] by that Court that *bazars* with some structures on, which are held once in the morning every day can be acquired but *hats* which are held once a week fall within the definition of vacant non-agricultural land under sub-clause *(iii)* of clause *(b)* of section 20(2) and, therefore, *hats* cannot be acquired by the Government under section 3(2) of the Act. To nullify the effects of this ruling sub-section *(2a)* of section 20 was incorporated by the Bangladesh Ordinance No. XII of 1960. It provides that "notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court lands of the classes referred to in the clauses *(a)* and *(b)* of sub-section (2) do not include and shall be deemed never to have included any land or building in a *hat* or *bazar*". The implication of this Ordinance is that the *hat* or *bazarss* are subject to acquisition by the Government.

In the year 1959 Bangladesh *Hats* and *Bazars* (Establishment and Acquisition) Ordinance No. XIX was passed to prevent the establishment of any new *hat* or *bazar*. Sub-section (1) of section 2 of that Ordinance provides that no person can establish any *hat* or *bazar* without obtaining a licence from the Collector. Sub-section (2) of the same section lays down that any *hat* or *bazar* established in contravention of the provision of sub-section (1) shall be forfeited to the Government. Under sub-section (3) any order passed by the Collector under sub-section (1) shall be final. Government may acquire under sub-section (1) of section 3 of the Ordinance any *hat* or *bazar*, established after the final publication of the compensation assessment-roll, on payment of compensation at the rate provided in clause (b) of sub-section (1) of section 39 of the Act. Under sub-section (2) of

46. (1957) 9 D. L. . 674
47. (1959) 11 D. L. R. (S. C) 316.

section 3 of the Ordinance a *hat* or a *bazar* shall, after acquisition, vest in the Provincial Government free from all encumbrances.

In the case of *Kazi Bahauddin v. Province of East Pakistan*,[48] a number of persons set up a few shops immediately adjacent or in close proximity to an old *hat* which had gradually extended itself. The petitioner was served with a notice by the Joint Deputy Commissioner of Dacca, which purported to inform him that his interest in land stood forfeited to the Government because of the alleged extension of the old *hat* and *bazar*. He was never given any opportunity to show cause against the order or to make representation whatsoever against the forfeiture of his property or to prove that he had not established a *hat* at all. So he could not prove that he was not liable to the imposition of a forfeiture within the meaning of sub-section (2) of section 2 of the Ordinance. It was held by Murshed J., (afterwards Chief Justice of East Pakistan) and Salauddin Ahmed J., that the setting up of a few shops cannot, in any manner or means, be said to be the establishment of a *hat* or *bazar* within the meaning of section 2 of the said Ordinance. According to the learned Judges the order is unfair and against the principles of natural justice.

It was contended on behalf of the Provincial Government that the Ordinance does not provide for any opportunity to be given to the petitioner to make any representation against the forfeiture of his property. In reply the learned Chief Justice observed that "this does not absolve the Collector, or any authority acting under the provisions of sub-section (2) of section 2 of the Ordinance from the duty of acting fairly in passing the order that has been made against the petitioner, and it is only elementary fairness that the petitioner should have been furnished with an opportunity to show cause as to why the order should not be passed."

It was next argued on behalf of the Provincial Government that the impugned order is an administrative or a ministerial

48. (1961) 15 D. L. R. 5.

order and not a judicial or a quasi-judicial act. So the authority concerned is free to act arbitrarily and even against the principles of natural justice. This contention did not appeal the learned Judges who observed that "whether the act may be described as administrative or quasi-judicial, the power given under sub-section (2) of section 2 of the Ordinance is dependent upon the determination of a fact objectively, namely, whether a new *hat* can be established, and upon such determination a penal order involving the forfeiture of a person's property can be made."

In the instant case it was also held that the power of acquisition of a citizen's property cannot be exercised arbitrarily and without giving a hearing. In this regard the learned Chief Justice went on to remark that "it is a well-settled doctrine of interpretation that when a legislature authorises the passing of such an order, there is inherent in the legislation itself the principle that the power so conferred must be exercised fairly and not arbitrarily . . . There can be, however, no doubt that, in a case where the exercise of any power conferred on him is dependent on a finding of a fact objectively, he cannot come to a finding against a person affected by the order without giving him a chance to make representation as to why the same may not be found against him. The principle, *audi alteram partem* (no man shall be condemned unheard), is the minimum requirement of law in such a case."

Pointing out the defects in the Ordinance the Court made the following observations : "The Ordinance appears to be an ill-conceived and a hasty piece of legislation. It has conferred a very drastic power of forfeiture of properties without providing for any opportunity to be furnished to affected persons enabling them to make representation against such forfeiture. It also appears that section 2 of the Ordinance was clumsily drafted. Sub-section (1) of the said section provides that no person shall establish any *hat* or *bazar* except after obtaining a licence for that purpose from the Collector in such form as may be prescribed by rules made under this Ordinance. Sub-section (2) reads thus: 'Any *hat* or *bazar*

established in contravention of the provision of sub-section (1) including the land on which such *hat* or *bazar* is established, and all interest therein shall be forfeited to the Provincial Government.' Whereas sub-section (1) makes it clear that the authority to grant the licence is the Collector, sub-section (2) is completely silent as to the authority which shall come to a finding that any person has established a *hat* or *bazar in* contravention of sub-section (1) and thereupon to pass the order of forfeiture. It is evident that the forfeiture of the property as mentioned in the said sub-section is dependent upon the establishment of a *hat* or a *bazar* without obtaining a licence from the Collector. Who, then, will investigate into the question and come to a finding that any *hat* or *bazar* has been established? The establishment of a *hat* or a *bazar* is a question of fact to be determined in each individual case, and it is only upon such a finding that the provision of sub-section (2) is attracted. Nowhere in section 2 is it specified that the Collector is required to come to such a finding which will involve the forfeiture of the property as mentioned in sub-section (2). Moreover, sub-section (3) of section 2 of the Ordinance makes the order of the Collector final in respect of the granting of licence under sub-section (1), but it is silent in respect of sub-section (2).

"It is interesting to note that section 3 of the Ordinance, which confers powers on the Provincial Government to acquire *hats* and *bazars* and to determine the question of compensation, provides for an appeal to the Commissioner against the order of the Collector in respect of payment of compensation. But it is incongruous that when a property is acquired upon payment of compensation, there would be a provision for an appeal, but that there should be no such right conferred upon the person concerned when his title to the property is wiped out thereby entailing a consequence which is of a far more drastic character."

Turning now to a fishery, it was held in the case of *Tazammal v. Province of East Pakistan*[49] that a several

49. (1959) 11 D. L. R. 145.

fishery (a fishery in a navigable river) is not included within the definition of estate and land, and as such it is not acquirable by the State under the provisions of the Act. A several fishery cannot be regarded as a profit arising out of land.[50] The dictum that fisheries are in their nature mere profits of the soil on which the water stands is true only in regard to territorial fisheries, for, there the right to fish arises from the right to the soil, but a several fishery in a navigable river is an incorporeal right.[51] There the right to fish arises not from the right to the soil but from the fact of navigability of the river.[52] A several fishery cannot be regarded as an encumbrance, for, it has no connection with the act or abstention of the owner of the land over which the navigable river flows.[53]

The fact that no provision has been made in section 39 of the Act for payment of compensation for a several fishery also leads to the conclusion that the legislature never intended to acquire such a fishery.[54] In this case the learned Judges observed that as an inland fishery of a rent-receiver comes under the definition of the "estate" and "land," it can be acquired by the Government.

To nullify the effect of this ruling it was enacted in sub-section (2*a*) of section 20 of the Act, introduced by the East Pakistan Ordinance No. XII of 1960, that a tenant cannot retain any fishery other than a tank constructed solely by the process of excavation. The same Ordinance has also provided an extended definition of land in section 2 (16*a*) of the Act to include all fisheries, several or territorial.

Sub-section (2*a*) has also the effect of excluding forest and ferry from the possession of a tenant and it vest in the Government free from all encumbrances. So far as the rent-receivers are concerned, their interests are to vest either from the date of the notification or from the date mentioned in

50. *Tazammal v. Province of East Pakistan* (1959) 11 D. L. R. 145.
51. *Ibid.*
52. *Ibid.*
53. *Ibid.*
54. *Ibid.*

such a notification. But so far as the *raiyats* and other tenants are concerned, their interests are acquired and vested in the Government on the notification of the final publication of the compensation-roll by virtue of sub-section (3) of section 44 of the Act.[55] No fresh notification is necessary for the acquisition of their interests.[56]

We shall now proceed to discuss whether *wakf, wakf-alal-aulad, debutter* or any other trust property can be acquired under the provisions of the Act.

We have already considered [57]that a *mutwalli* or a *shebait* is a rent-receiver within the meaning of the Act and the rent-receiving interests held under *wakf, wakf-alal-aulad* and *debutter* are hit by the notification of the 2nd April, 1956 issued under section 3(1) of the Act. By the judgement of the Supreme Court of Pakistan in the case of *Jibendra Kishore v. Province of East Pakistan.*[58] it was noticed that "by the operation of the Act this class of rent-receivers is divested of their interests in the land which, whether they vested in the Almighty or a deity or for the purposes of the Act in the *mutwalli* or the *shebait*, are from the date of the notification transferred absolutely to the Provincial Government." And under sub-section (5) of section 3, the outgoing *mutwalli* or *shebait* becomes entitled to compensation as provided in the Act. Where acquisition has been effected in the alternative manner detailed in Chapter V, namely, by preparation of a record-of-rights and compensation assessment-rolls, the rent-receiver becomes liable to be dispossessed of all lands in his *khas* possession except 375 standard *bighas* of land or 10 standard *bighas* per member of the family, whichever is greater. In such cases, by reason of sub-section 5 *(i) (c)* of section 20, a rent-receiver in possession of *wakf, wakf-alal-aulad* or *debutter* lands as are exclusively applied to religious or charitable purposes without reservation of pecuniary benefit for any individual cannot be dispossessed. And where the income from the lands held under any *wakf, wakf-alal-aulad* or *debutter* is partly dedicated for religious or charitable purposes and partly reserved for the pecuniary benefit of any individual, under sub-clause *(ii)* of sub-section (5) of section 20, only such portion of the lands, as may be selected in accordance with the rules to be made in this behalf by the Provincial Government, comes within this exception. Sub-section (3) of section 37 directs that where the net income or any portion of the net income in respect of any estate, tenure, holding or tenancy, wholly or partly held under *wakf, wakf-alal-aulad, debutter* or any other trust or legal obligation has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual, the compensation payable for the acquisition of the interests of any rent-receiver in respect of the net income or the portion of the net income so dedicated and applied shall, instead of being assessed under clause (1), be assessed in the prescribed manner as a perpetual annuity, equal to such net income or portion of the net income, as the case may be. These are the basic provisions of the Act with regard to acquisition of *wakf, wakf-alal-aulad* and *debutter* properties.

In the case of *Jibendra Kishore* v. *Province* of *East Pakistan,*[59] a number of writ petitions were moved before the Dacca High Court challenging the validity of the acquisition of *wakf* and *debutter* property under the provision of the Act. It was held [60] that the State can acquire such property like other properties and only they have to qualify and restrict such acquisition in the manner provided in sub-section (5) of section 20.

Against this decision an appeal was filed before the Supreme Court of Pakistan.[61] By the judgement of that Court

55. *Province of East Pakistan v. Secretary M. A. S. Madrasa* (1964) 16 D. L. R. 281; *Shaha Md. Elias v. Province of East Pakistan* (1964) 17 D. L. R. 277.
56. *Province of East Pakistan v. Secretary M. A. S. Madrasa* (1964) 16 D. L. R. 281.
57. See P.29
58. (1957) 9 D. L. R. 21 S. C.

59. (1956) 8 D.L. R. 457.
60. *Ibid* p.516.
61. (1957) 9 D. L. R. (S. C.) 21.

eight appeals were "remitted to High Court for determining the question as to what extent the dedications involved in them come within the definition of religious institutions and are accordingly protected by Article 18 of the Constitution and for granting such relief as the Court in its discretion may consider to be appropriate in the circumstances." These were appeals in which an attack had been made on the validity of acquisition of rent-receivers, interests where the land held under *wakf, wakf-alal-aulad* or *debutter* and it should be stated that the cases in question included no case of *debutter* and all of them are cases of *wakf* or *wakf-alal-aulad*. The Supreme Court was of the view that certain provisions of the East Bengal State Acquisition and Tenancy Act of 1950 "strike religious institutions at their very root, and the question is whether, that being the effect of the provisions they constitute an infringement of the Fundamental Right guaranteed by Article 18 of the Constitution."

The late Constitution of 1956 was then in force, and the protection referred to was expressed in the following terms :—

"Subject to law, public order or morality :

(a) ... ., and

(b) every religious denomination and every sect thereof has the right to establish, maintain and manage its religious institutions."

In the High Court it was held that the words "subject to law" had the effect of rendering religious institutions in question subject to the provisions of the Act and this was overruled by the Supreme Court principally on the ground that the Fundamental Right having been guaranteed by the Constitution could not be taken away by the law and to construe Article 18 in the manner adopted by the High Court would be to attribute an intention to the makers of the Constitution "to empower the legislature to take away from the Muslims the right to profess, practise and propagate their religion and to establish, maintain and manage their religious institutions" and equally in the case of the non-Muslim citizens of the State. It was held that such a conclusion was impossible and that the expression "subject to law" was intended to confer upon the legislature "the power to regulate the manner in which such institutions may be established, maintained and managed" but no power "to make a law that hereafter no institutions of religious character shall be established or managed or that an existing religious institutions shall be abolished." It was observed that the "law may step in when professions break out in open practices inviting breaches of peace or when belief, whether in publicly practicing a religion or running a religious institution leads to overt acts against public order." It was in the light of these observations that the order remitting the case to the High Court was made in the terms already mentioned.

The remand petitions were in the first instance heard by a Division Bench of the Dacca High Court composed of two Judges who differed in their views.[62] The difference arose as to the meaning and effect of Article 18(b) *i.e.*, whether it gave protection to a *wakf-alal-aulad* which is a Muslim religious trust for the benefit of the creator of the trust or his lineal descendants in the first instance, with an ultimate dedication to God, to be applied for charitable purposes. Mr. Justice Akbar agreed that the *wakf-alal-aulad* is a religious institution, but the Judge thought that in order to qualify for protection under Article 18*(b)*, it is also necessary that such an institution should be one in which a religious denomination has an interest, using the expression denomination in the sense of a "religious sect or body having a common faith and organisation, and designated by a distinctive name." In the opinion of the learned Judge, a *wakf-alal-aulad* being "a dedication substantially for the benefit of the *wakf's* family" must be treated as a dedication for the benefit of individuals, and could not be regarded as a dedication for public purposes. The learned Judge recorded the following remarks :—

"Before dealing with these different *wakfs*, I would like to observe that the learned Advocates for the parties confined their arguments to the question as to whether a dedication for

62. *Md. Mahdi Ali v. Province of East Pakistan (1957) 10 D. L. R.* 96.

benefit of the *wakf's* descendants and family is a religious institution within the meaning of Article 18."

As regards other *wakfs*, his Lordship's opinion is expressed as follows :—"In my opinion, dedications for the maintenance of Mosques and *dargahs* are religious institutions within the meaning of Article 18*(b)* of the Constitution."

Although his Lordship found that provisions for maintenance of Mosques and *dargahs* and for the performance of ceremonies for the feeding of the poor and other charities were contained in the *wakfs* covered by six of the petitions before him, the learned Judge found it impossible on the materials before him to decide whether all or any of them should get the protection of Article 18 *(b)* and observing that the petitioners "will be at liberty to agitate this question later if they so desire," he confined the relief in these six cases to cancellation of the notifications issued in respect of *khas* land of these *wakfs* only, on the ground that the notifications issued were defective. In the two remaining petitions, he found that the *mutwallis* had already filed regular suits to avoid the acquisitions, and, for this reason, in order to avoid contradictory judgments, his Lordship declined to grant the petitioners relief by way of a writ of *mandamus*, leaving them to agitate further questions by separate suits if they so desired.

The other learned Judge, Mr. Justice Imam Hussain Chowdhury interpreted the judgment of the Supreme Court as holding that *wakf, wakf-alal-aulad* and *debutter* are protected under Article 18 of the Constitution. The learned Judge examined the matter in the light of earlier decisions and the provisions of the law of Islam as had been done by Mr. Justice Akbar also, and the learned Judge came to the conclusion that *wakf, wakf-alal-aulad* and *debutter* are religious institutions, and, as to the provision in Article 18 *(b)* regarding "religious denomination or sect," his Lordship's view was as below :—

"The expression 'religious denomination' is a general name for class of like individuals such as Christian, Muslim, etc., which means every individual Christian as well as the Christian community, etc."

The learned Judge then proceeded to observe : "In clause *(b)* of the Article, the right to profess, practise, propagate any religion is given to every citizen. Can it be imagined that such a right in respect of establishment, management and maintenance of a religious institution which forms part of a practice of a religion, is denied to a citizen?"

His Lordship also pointed out that "every *wakf* ultimately goes to the public charity" and relied upon the rule of construction which had been stated in the judgment of the Supreme Court, namely, that provisions in a Constitution should receive liberal interpretation in favour of the citizen specially in respect of those provisions which are designed to safeguard the freedom of conscience and worship, which in the larned Judge's opinion was equally applicable in interpreting clause *(b)* of Article 18 of the Constitution. He was prepared to grant writ of *mandamus* in the eight cases before the Court irrespective of the pending civil suits.

A difference thus having arisen, the point of difference was referred as is required by clause 36 of the Letters Patent of the High Court, to a third Judge for his decision. The third Judge (Mr. Justice Ispahani) after hearing arguments, expressed the opinion that the Supreme Court "expressly or impliedly have decided that *wakf, wakf-alal-aulad and debutter* are religious institutions and protected under Article 18 of the Constitution from acquisition" and that the purpose of the remand order was "the determination of the extent the dedications involved in these petitions are dedications for purposes recognised by the Muslim law as religious and charitable." As to the argument that Article 18*(b)* has the effect of restricting protection to religious institutions appertains to some particular religious denomination or sect, the learned Judge was of the view that 'every religious denomination and every sect thereof' includes also individuals and thus individuals as well as religious denominations and every sect thereof have the right to establish, maintain and manage its religious institutions."

Accordingly, being in agreement with Mr. Justice Chowdhury on both points, the learned Judge made an order to the East Pakistan Government "to withdraw or rescind the notices issued in respect of the rent-receiving interests of the petitioners."

Against the order passed on remand, the Province of East Pakistan and seven others appealed to the Supreme Court of Pakistan.[63] During the pendency of the appeals Marshall Law was declared throughout Pakistan on the 7th October, 1958 and the Constitution of 1956 was abrogated. The judgment of the Supreme Court which was not unanimous was delivered by Munir, C. J., with whom Shahabuddin and Rahman, JJ., concurred and it formed the majority view. According to the majority view the applications giving rise to appeals have all abated under clause (7) of Article 2 of the Laws (Continuance in Force) Order, 1958 which was promulgated by the President on the 10th October of that year.

This clause divides writs into two categories, *i.e.* (1) writs "provided for by this order" and (2) writs "not so provided for." In the case of writs falling under the first category, the order declares that such writs may be issued by the Supreme Court as well as by the High Courts, and that the writs of this class already issued and the orders for such writs already made are valid whether the orders were made by the Supreme Court or by the High Courts. As regards the writs falling under the second category, the clause says that if such writs were issued by the Supreme Court after the proclamation and before the order, a mere matter of three days, the writs and orders for them would be valid and binding on all Courts and authorities in Pakistan, but that if they were not issued or made by the Supreme Court, *e.g.*, where they were issued or made by a High Court, they are not to take effect, and that all applications for such writs and proceedings taken in respect of such writs shall abate.

We may profitably quote here the relevant portion of the Judgment : "What we held in our previous judgment was that

63. *Province of East Pakistan v. Md. Mahdi Ali* (1956) 11 D. L. R. (S.C.)318.

because some of the properties acquired were alleged to be *wakf*, the Act in so far as it empowered the Provincial Government to acquire such properties must yield to the direction of the Constitution that all citizens shall have the right to establish and maintain religious institutions. We did not more than expound the law on a certain supposition and left it to the High Court to apply it to the facts to be found by it on investigation. If on investigation the dedications were found to be *wakfs*, then under the law the dedicated property could not be acquired by reason of Article 18 and in that event the High Court was to exercise its discretion in granting or refusing relief.

"According to the view taken by the High Court, even if the property was *wakf*, it could be acquired by the Government and, therefore, the question whether the dedications did or did not amount to *wakf* was not determined by that Court. The Supreme Court differed from the High Court in this view and held that if the properties are *wakf* they belonged to religious institutions the establishment or maintenance of which was guaranteed by Article 18 *(b)* and that, therefore, they were not liable to acquisition by the Government. We merely explained the law that had to be applied if the High Court found the properties to be *wakf*, but we ourselves did not apply the law because we did not determine the facts nor was any such determination by the High Court before us . . . .

"Article 18 had to be applied after the dedications were found to be valid *wakfs*, there being no earlier occasion for the application of that Article because the requisite facts had not till then been determined. The function of the High Court was not therefore, merely ministerial but essentially judicial because the ascertainment of facts and the application of law to them was left to the High Court. If, therefore, before the High Court had applied to the facts the law as expounded by us, the law itself was changed by a competent legislative authority and made applicable to pending applications, the High Court was bound to ignore our statement of the law and to apply the law which was in force at the time it had to adjudicate on the existence of the right that had been asserted

in the original applications. If the Laws (Continuance in Force) Order had come into force while the High Court was investigating the facts or before it was called upon to apply the law to the facts found by it, it was the law contained in that order which would have governed the rights and liabilities of the parties and not the law as expounded by us . . . .

"When in compliance with the order of remand the High Court investigated the existence of the *wakfs* and, after investigation applied Article 18 to them, it was acting judicially in a pending case. Had article 18 itself been abrogated before the proceedings terminated in that Court, the direction in the order of remand to apply that Article would have become infructuous and abortive and the High Court would have been bound to apply the law as it existed when it decided to issue the writs. The order of High Court being sub-judice before us on special leave to appeal having been granted, we are bound to apply the law as it exists today and since Article 18 is no longer available to impeach the notifications the Court cannot allow the writs to operate . . . Their foundation is a Fundamental Right that no longer subsists and is not available for an attack on the constitutionality of the law under which the notifications were issued. On the contrary, the law in force now directs that all such application shall abate . . . . I would, therefore, accept the appeals and hold that the applications giving rise to them have all abated under clause 7 of Article 2 of the Laws (Continuance in Force) Order."

Mr. Justice S. A. Rahman concurring with the majority view held in his separate Judgment that "with the abrogation of the Constitution on the promulgation of the President's Proclamation, the Fundamental Rights disappeard from the field entailing the consequence that laws existing on the Statute Book were given a fresh lease of life by the Laws (Continuance in Force) Order, 1958, in their original condition and those of their provisions which were inconsistent with the Fundamental Rights have been revived in their full vigour. The East Bengal State Acquisition and Tenancy Act, 1950 has undergone a similar change. Because of

the appeals pending in this Court, the subject matter of the dispute has become sub-judice and, therefore, the appeals are not taken out of the principle laid down in *Dosso's* case [64] and ought to be rejected as having abated."

A careful study of the decision of the Supreme Court in *Mehdi Ali Khan's* case[65] when read together with the decision in *Jibendra Kishore's case*[66] leads to the conclusion that the Supreme Court has laid down that so long as the Fundamental Rights regarding maintenance and management of religious institutions are in force the provisions of the East Bengal State Acquisition and Tenancy Act, 1950, cannot be resorted to for acquiring properties set apart for maintenance of the institutions of *wakf* and *debuttar*.[67] It follows from this that if acquisition of such properties takes place under the Act at a time when no Fundamental Right is in force the same cannot be challenged on the basis of Fundamental Rights having been brought in force subsequent to the acquisition, as such rights guaranteed by the Constitution of 1962 do not operate retrospectively.[68]

After the decision of *Mehdi Ali Khan's* case,[69] the case of *Province of East Pakistan v. Nawab Habibullah*[70] came up before the Dacca High Court. In this case four appeals were disposed of. In each of these suits, the plaintiff-*mutwalli* prayed for declaration that the provisions in the Act for acquisition of *wakf* estates are illegal, *ultra vires* and void and the notification under section 3 of the Act was also illegal and void. Prayer was also made for permanently restraining the Government from taking possession of the *wakf* properties. In each of these suits there were averments in the plaint that the notification under section 3 was not published.

64. (1959) 11 D. L. R. (S. C.) 1.
65. (1959) 11 D. L. R. (S. C.) 318
66. (1957) 9 D. L. R. (S. C.) 21
67. *Province of East Pakistan v. Nawab Khawaja Habibullah* (1965) 18 D. L. R. 727; *Jalil Ahmed v. Province of East Pakistan* (1965) 15 P. L. R. (Dhaka) 1049 at 1113 = 19 D. L. R. 106 S. B.
68. *Ibid.*
69. (1959) 11 D. L. R. (S. C.) 318.
70. (1965) 18 D. L. R. 727.

The suits were decreed in the lower Courts and the notification in question was declared to be invalid and the Government was permanently restrained from taking possession of the *wakf* properties. The Government filed this appeal before the High Court which reiterated the same view taken by the Supreme Court in the case of *Jibendra Kishore v. Province of East Pakistan and Mehdi Ali Khan's* case mentioned above. The appeal was dismissed on the ground that the notification under section 3 was not published and the Government was restrained from taking possession of the *wakf* properties.

Then the case of *Jalil Ahmed and others v. Province of East Pakistan*[71] came up before the Dacca High Court in which 19 petitions were heard by 3 Judges. The judgment was delivered by Sattar, J. with whom Ali, J. concurred, Abdulla, J. delivered a dissentient judgment. In this case two questions were raised : (a) Whether by the notifications dated the 9th May, 1959, issued by the Government under sub-section (1) and (2) of section 3 of the East Bengal State Acquisition and Tenancy Act, the effect of the notifications of the 2nd April, 1956 issued earlier under the same provisions was wiped out? (b) Whether the second exception refers to all *wakf* and *debutter* interests acquired as well as not acquired or relates only to *wakf* and *debutter* interests not acquired till then.

After considering the earlier cases on the subject Sattar and Ali, JJ. came to the following conclusions :—

(1) So far as those *mutwallis* and *shebaits* who were rent-receivers are concerned, their rent-receiving interests and non-retainable *khas* lands vested in the provincial Government by the notification dated 2nd April, 1956.

(2) So far as the retainable *khas* lands of such *mutwallis* and *shebaits* are concerned, any quantity in excess of the retainable limit vested in the Provincial Government on and from the first day of the agricultural year next following the date on which notifications under sub-section (2) of section 43 were published. If in respect of any such land no compen-

71. (1967) 19 D. L. R. 106 S. B.

sation assessment-roll has been prepared the Government cannot claim the same as having vested in it simply because compensation assessment-roll in respect of the area concerned has been made and duly published. In the case of acquisition under Chapter V the interests which are acquirable vest only if assessment of compensation in regard to the same has been made and published as provided in the Act.

(3) So far as the *mutwallis* and *shebaits* other than rent-receivers are concerned, their acquirable interests have vested under Chapter V, subject to the limitation.

(4) There are undoubtedly authorities for the propostion that there is a difference between enforceability of a law consistent with the Constitution and the enforceability of such a law by means of an unconstitutional precedure laid down in the statute which was enacted before the coming into force of the Constitution. After the acquirable interests vested in the Provincial Government and they became entitled to possess the same nothing remained to be done under the Act which can be said to be inconsistent with the Fundamental Rights guaranteed by the Constitution and there is no bar for the Provincial Government to possess these interests.

It may now be observed that the Government should acquire the *wakf* and *debutter* properties. It is expected that the religious and charitable institutions will run smoothly at the hands of an able administrator under the Government. Moreover, there cannot be two land tenure systems in one province. Since the enactment of the Act almost all the estates have been acquired. Government should take steps to acquire the *khas* lands held under *wakf-alal-aulad*. We are aware of pathetic tales and miseries from the beneficiaries at the hands of unscrupulous *mutwallis*. *Wakf-alal-aulad* has been created for the happiness and well-being of the beneficiaries. If they suffer the very object is frustrated. It may be suggested that the *khas* lands held under *wakf-alal-aulad* should be distributed to the beneficiaries. That will give them adequate relief.

21. Payment of rent for land retained in possession : All lands of which a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant retains possession under section 20, shall be held on payment of such fair and equitable rent as may be determined under the provisions of this Act.

22.[72] All lands to be liable to fair and equitable rent determined under this Chapter : (1) Notwithstanding anything contained in any other law for the time being in force or in any entry made in the record-of-rights last prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, all lands in any district or part of a district or local area in respect of which a record-of-rights is prepared or revised under this Chapter shall be subject to the payment of fair and equitable rent determined in accordance with the provisions of this Chapter and the rent so determined shall be entered in the record-of-rights so prepared or revised :

Provided that it shall not be necessary to determine under this Chapter, the rent of any land, the rent of which has already been determined under section 5 and the rent so determined shall be deemed to be fair and equitable rent determined in accordance with the provision of this Chapter.

(2) Where the fair and equitable rent determined or deemed to be determined for any land under the provisions of this Chapter has not taken effect earlier under any other provision of this Act it shall take effect from the first day of the Agricultural year next following the date of publication of the notification under sub-section (2) of section 43 declaring that a Compensation Assessment-roll in respect of the area in which the land is situated has been finally published.

Note : Section 22 declares that fair and equitable rent will be assessed upon all lands. This section was substituted for the former section by the East Pakistan Ordinance No.44 of 1958. Under sub-section (1) all lands in any district or part of

72. Section 22 was substituted for the former section 22 by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. XLIV of 1958) section 9.

a district or local area in respect of which a record-of-rights has been prepared or revised shall be subject to the payment of fair and equitable rent and the rent so determined shall be entered in the record-of-rights so prepared or revised. After the state acquisition no land will be held rent-free or at a low rate of rent. In the opinion of the Special Committee "it will create a new class of proprietors if the rent-free proprietors, rent-free tenure-holders or rent-free *raiyats* are allowed to hold the land rent-free even after the acquisition or to hold them at a low rate of rent"[73] The rent of the *khas* lands of the rent-recievers will be determined on the principle laid down in section 5 of the Act and the rent so determined will be deemed to be fair and equitable.

Sub-section (2) directs that where the fair and equitable rent has been determined for any land but it has not been given effect to under any other provisions of the Act, it shall take effect from the first day of the agricultural year next following the date of publication of the notification under sub-section (2) of section 43 declaring that a compensation assessment-roll has been finally published.

23. Determination of fair and equitable rents of *khas* lands : In preparing or revising a record-of-rights under this Chapter, the Revenue-officer shall determine the rent of every parcel of land in the *khas* possession of a proprietor or tenure-holder, including a proprietor or tenure-holder whose interests have been acquired under Chapter II, within the area to which such record relates—

(i) if such land be agricultural land, [at a rate which the Revenue-officer may deem fair and equitable having regard to the rates of rent generally][74] paid by occupancy *raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring village, and

73. Clause 8 of the report.
74. The words within square brackets were substituted for the words "on the basis of the prevailing rate of rent" by section 10(1) of the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No. XLIV of 1958).

(ii) if such land be non-agricultural land, at a rate which the Revenue-officer may deem fair and equitable having regard to —

(a) the rent generally paid to the Provincial Government or to any other landlord for non-agricultural lands with similar advantages or of a similar description in the vicinity,

(b) the market value of the land immediately before the publication of the notification under section 17, and

(c) the rent which would be payable if the rate were fixed at not more than one *per centum* of such market value.

whether or not such proprietor or tenure-holder is entitled to retain possession of such parcel of land under section 20.

Provided [75] that in any estate, *taluk* or tenure, where a land revenue settlement was made within the last fifteen years, the rate of rent adopted as fair and equitable in such settlement may be taken to be the [fair and equitable][76] rent within the meaning or this section.

Explanation.—For the purposes of this section "land" does not include any building or structure standing thereon.

Note : Section 23 provides how fair and equitable rent is to be determined with regard to the *khas* lands of a proprietor or a tenure-holder in preparing or revising a record-of-rights. In case of agricultural land, the Revenue-officer will determine the rent at the rate which he may deem fair and equitable having regard to the rates of rent generally paid by occupancy *raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages. In case of non-agricultural land, he will determine the rent at the rate which he may deem fair and equitable having regard to (a) the rent generally paid by a tenant to the

75. This proviso was substituted for the original proviso by section 6 of the East Bengal State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act. XII of 1954) which shall be deemed to have come into force on the first day of January, 1952.

76. The words within square brackets were substituted for the words "prevailing rate of" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord.No XLIV of 1958) section 10(2).

Provincial Government or to any other landlord for non-agricultural lands with similar advantages or of a similar description in the vicinity, (b) the market value of the land immediately before the publication of the notification under section 17 directing the preparation or revision of record-of-rights, and (c) the rent which would be payable if the rate were fixed at not more than one *per centum* of such market value.

Under the proviso where a land revenue settlement was made in any estate, *taluk* or tenure within the last fifteen years, the rate of rent adopted as fair and equitable in such settlement may be taken to be the fair and equitable rent for the *khas* lands of a proprietor or a tenure-holder. It is also provided in the explanation that for the purpose of this section "land" will not include any building or structure standing thereon.

24. Determination of fair and equitable rents of *raiyats* and under-*raiyats* : (1) In preparing or revising a record-of-rights under this Chapter, the Revenue-officer shall, subject to the provision of sub-sections (2), (3) and (4), presume the rent, payable in respect of any land held by a *raiyat* or an under-*raiyat* in the area to which such record relates at the time of preparation or revision of such record, to be fair and equitable.

(2) Where the rent so payable in respect of any such land by a *raiyat* is in the opinion of the Revenue-officer unfair or inequitable, he may reduce such rent [to what is considered by him a fair and equitable, having regard to the rates of rent generally][77] paid by the occupancy-*raiyats* for lands of a

77. The words and comma "to what is considered by him as fair and equitable, but not below" were substituted for the words "on the basis of" by section 7 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act XII of 1954), which shall be deemed to have come into force on the first day of January, 1952.
The words "having regard to the rates of rent generally" were substituted for the words "but not below the prevailing rate of rent" by section 11 of the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. B. Ord. XLIV of 1958).

similar description and with similar advantages in the same village or in the neighbouring villages.

(3)[78] Where the rent payable for any land by an under-*raiyat* is, in the opinion of the Revnue-officer, unfair or inequitable, he may reduce such rent to an amount not exceeding the fair and equitable rent payable by an occupancy-*raiyat* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages, increased by fifty *per centum*.

(4) If any *raiyat* or under-*raiyat* pays, in respect of any land referred to in sub-section (1), rent either in kind or on the estimated value of a portion of the crop or at rates varying with the crop or in more than one of these ways, the Revenue-officer shall commute such rent to a fair and equitable money-rent at an amount not exceeding one-tenth of the total value of the annual gross produce of such land obtained by multiplying the normal annual yield of that land, determined in the manner prescribed, by the average price of each kind of produce prevailing in the preceeding twenty years, excluding the years in which such prices were abnormal :

Provided [79] that the Revenue-officer shall, at the time of commuting such rent to a fair and equitable money-rent, allow for the superior landlord of such *raiyat* or under-*raiyat* a margin of profit of not less than twenty-five *per centum* and not more than fifty *per centum* of the rents payable by the superior landlord of such *raiyat* or under-*raiyat* (when such superior landlord pays rents either in kind or on the stimated value of a portion of the crop of at rates varying with the crop or in more than one of these ways.][80]

78. Sub-section (3) was substituted for the original sub-section (3) by section 7 of the East Bengal State Acquisition and Tenancy (Amendment) Act. 1954 (E. B. Act. XII of 1954), which shall be deemed to have come into force on the 1st day of January, 1952.

79. This proviso was added after substituting a colon for the full-stop at the end of sub-section (4) of section 24, *ibid*.

80. These words were added at the end of the proviso to sub-section (4) of section 24 by section 7 of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ord. No.III of 1956].

Note : Section 24 provides how fair and equitable rent is to be determined with regard to the land held by a *raiyat* or an under-*raiyat* in preparing or revising a record-of-rights. Sub-section (1) directs the Revnue-officer to presume the existing rent payable by such a tenant to be fair and equitable.

Sub-section (2) provides that where the rent payable by a *raiyat* is unfair and inequitable; the Revenue-officer may reduce the rent to what he considers to be fair and equitable. In doing so he is to consider the rates of rent generally paid by occupancy-*raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages.

Sub-section (3) contemplates that where the rent payable by an under-*raiyat* is unfair and inequitable, he may reduce the rent and fix it at 50 *per cent* more of the fair and equitable rent payable by an occupancy-*raiyat* for lands of a similar description and with similar advantages in the village or in the neighbouring villages. Thus where an occupancy-*raiyat* pays Rs.4, an under-*raiyat* will pay Rs.6.

Sub-section (4) directs the Revenue-officer to commute the rent in kind payable by a *raiyat* or an under-*raiyat* into a fair and equitable money-rent not exceeding one-tenth of the total value of the annual gross produce of the land held by such a tenant. The annual gross value of the land will be determined by multiplying the normal annual yield of that land by the average price of the produce prevailing in the preceding 20 years, excluding the years in which such prices were abnormal. Rule 29 gives us the clue how the normal annual yield of land can be determined. It states as follows :—

"29. (1) The normal annual yield of any land, for which such rent as is referred to in sub-section (4) of section 24 of payable shall be determined in the manner prescribed in sub-rule (2) to (5).

"(2) For each *thana*, the Revenue-officer shall determine, by local inquiries, the average outturn (in maund) of different crops per acre, for different classes of lands.

"Where the Revenue-officer considers it necessary, he may cause crop-cutting experiments to be made for the purpose, of

determining the average outturn of any crop per acre, for any class of land in the *thana*.

"(3) When the Revenue-officer has determined the average outturn under sub-rule (2), he shall cause the figures relating thereto to be published at some convenient place in each village within the *thana*, with a general notice informing the landlords and the tenants concerned that they may file objections to such figures within thirty days from the date of such publication. The fact of such publication and the last date on which objections may be filed shall also be proclaimed in each such village by beat of drum on the date of such publication.

"(4) The Revenue-officer may, after considering the objection, if any, filed under sub-rule (3), revise the average outturn so determined.

"(5) For the purposes of sub-section (4) of section 24, the normal annual yield of any crop in respect of any land of any class shall bear the same proportion to the average outturn of such crop per acre determined for such class of land in the *thana* under the foregoing sub-rules as the area of such land bears to the area of one acre.

"(6) If the Revenue-officer thinks that the application of such average outturn to any land will be unfair or inequitable, he may, after giving the parties an opportunity of being heard, determine the normal annual yeild of such land in such manner as he considers fit, and in doing so, he shall have regard to the circumstances of each case and record the reasons for and the basis of such determination."

In computing the rent in kind into a fair and equitable money rent, the Revenue-officer is to allow for the superior landlord of a *raiyat* or an under-*raiyat* a margin of profit of not less than 25 *per cent* and not more than 50 *per cent* of the rents payable by such a superior landlord.

25. Determination of fair and equitable rents of non-agricultural tenants : In preparing or revising a record-of-rights under this Chapter, the Revenue-officer shall determine the fair and equitable rent of all non-agricultural lands held by non-agricultural tenants other than a tenureholder in accordance with the provisions of section 23 so far as they apply to non-agricultural lands :

Provided that when any such tenant holds any such land immediately under any person other than a proprietor or a tenure-holder, the Revenue-officer shall presume the existing rent payable by such tenant for such land to be fair and equitable unless it exceeds by more than fifty *per centum* the fair and equitable rent payable in respect of such land by such person; and if it so exceeds the Revenue-officer shall fix the rent of such land so held by such tenant at a rate not exceeding the rate of the fair and equitable rent payable for such land by such person by more than fifty *per centum*.

25A.[81] **Enhancement and assessment of rent in certain cases :** (1) When the rent of a *taluk*, tenure, holding or tenancy is less than the rent or revenue payable by the landlord of such *taluk*, tenure, holding or tenancy to his superior landlord or the Provincial Government, as the case may be, the rent of such *taluk*, tenure, holding or tenancy may be enhanced by the Revenue-officer to an amount not less than the rent or revenue payable by such landlord in respect of such *taluk*, tenure, holding or tenancy :

Provided that when any such *taluk*, tenure, holding or tenancy comprises a portion of the land of the parent estate, *taluk*, tenure, holding or tenancy, the Revenue-officer shall, in determining the amount of enhancement of the rent under this section, take into consideration the rents payable to such landlord for any lands and the rental value of any lands in the *khas* possession of such landlord included in the remaining portion of the land of the parent estate, *taluk*, tenure, holding or tenancy.

(2) Where any land held by a tenure-holder, a *raiyat*, an under-*raiyat* or a non-agricultural tenant is liable to be assessed to rent, but no rent has been assessed in respect thereof, the Revenue-officer shall determine the rent payable

81. Section 25A was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958; Section 12.

by such tenure-holder according to the principle of section 7 of the Bengal Tenancy Act, 1885, and by such *raiyat* or under*raiyat* or non-agricultural tenant according to the principle of section 26.

26. Assessment of rent for rent-free land : (1) Where any land is held by a *raiyat* or an under-*raiyat* free of rent the rent for such land shall be determined [at a rate which the Revenue-officer may deem fair and equitable having regard to the rates of rent generally][82] paid by the occupancy-*raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages.

(2) Where any non-agricultural land is held by a tenant free of rent, the rent for such land shall be determined in accordance with the provisions of section 23 so far as they apply to non-agricultural lands.

Note : The object of section 26 is to convert the rent-free holdings of a *raiyat* or an under-*raiyat* into revenue-paying holdings. Originally it was declared that the rent of such lands will be determined on the basis of the prevailing rate of rent. But the East Pakistan Ordinance No.XLIV of 1958 directs the Revenue-officer to determine the rent on the basis of the rent paid by the occupancy *raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages.

Sub-section (2) provides that the rent of non-agricultural land shall be determined in accordance with the principle laid down in section 23 of the Act. We have already considered the scope of that section.

27. Creation of separate holdings or tenancies in certain cases : Where a rent-receiver other than a proprietor or tenure-holder holds only a portion of a holding or tenancy in his *khas* possession, such portion shall be constituted into a separate holding or tenancy and assessed to rent separately,

82. The words within square brackets were substituted for the words "on the basis of the prevailing rate of rent" by section 13 of the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958].

and in making such assessment, the Revenue-officer shall have regard to the rent of the original holding or tenancy, the proportionate area and value of the new holding or tenancy and the provisions of this Chapter for the determination of fair and equitable rent of a holding or tenancy of that class.

* * * * * * * * *[83]

28. Assessment of rents of service tenancies : In preparing or revising a record-of-rights under this Chapter, the Revenue-officer shall fix, in respect of every land held within any area to which such record relates by a person who has been found on evidence produced before him to be entitled to hold such land free of rent in consideration of some service to be rendered, a rent [at a rate which the Revenue-officer may deem fair and equitable having regard to the rates of rent generally][84] paid by occupancy *raiyats* for lands of a similar description and with similar advantages in the same village or in the neighbouring villages and shall record such person in the record-of-rights as a *raiyat* :

Provided that nothing in this section shall apply to any land held within the boundaries of a tea esate or any other industrial organisation.

Note : Section 28 deals with assessment of rent on a service tenancy. Under the original section the Revenue-officer was authorised to assess the rent on such a tenancy on the basis of prevailing rate of rent. But subsequently this rule was changed by the East Pakistan Ordinance No.XLIV of 1958 under which the rent is to be fixed at a rate which the Revenue-officer may deem fair and equitable having regard to the rates

83. The proviso to section 27 added by section 12 of E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952) was omitted by section 8 of the East Bengal State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act. XII of 1954).

84. The words within square brackets were substituted for the words "determined on the basis of the prevailing rate of rent" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958). Section 14.

of rent generally paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in the neighbouring villages. After assessment of rent the Revenue-officer is to record a service tenant in the record-of-rights as a *raiyat*. But this right is not available to persons holding rent-free lands in consideration of some service within the boundaries of a tea estate or any other industrial organisation.

In the case of *Narayan v. Ganesh*,[85] the question was whether a transferee of a service tenure could acquire any title when it was not transferable by law. It was held by Murshed, C. J., that section 28 does not authorise the transference of a service tenure. If a *chakran* tenancy could not be transferred, it would not become transferable merely because of the provisions of section 28. This section only provides that if the holder of the *chakran* had so desired he could get himself recorded as a *raiyat* upon assessment of rent indicated by this section.[86]

29. Effect of rents settled under this Chapter : (1) All rents determined under this Chapter and entered in the record-of-rights finally published under section 19, shall, subject to the provisions of section 53, be deemed to have been correctly determined and to be fair and equitable for the purposes of this Act.

(2) No suit shall be brought in any Civil Court in respect of the determination of any rent to the determination of which the provisions of this Chapter apply or in respect of omission to determine any such rent.

30. Bar to jurisdiction of Civil Court : (1) After an order has been made under section 17 directing the preparation or revision of a record-of-rights in respect of any area, no Civil Court shall entertain any suit or application for the alteration of rent or determination of the status of any tenant or the incidents of any holding or tenancy in such area; and if

85. (1965) 17 D. L. R. 308 = 16 P. L. R. (Dacca) 18.
86. *Ibid.*

any such suit or application relating to such area is pending before a Civil Court on the date of such order, it shall not be further proceeded with and shall abate.

Explanation—Suit in this sub-section includes an appeal.

(2) No suit shall be brought in any Civil Court in respect of any order directing the preparation or revision of records-of-rights under this Chapter or in respect of framing, publication, signing or attestation of such record or any part of it.

(3) No suit, appeal or proceeding in a Civil Court or High Court in respect of any land, nor any order passed in such suit, appeal or proceeding, shall operate as a bar in any way to the preparation or revision of records-of-rights or of Compensation Assessment-rolls in accordance with the provisions of this Act.

Note : Section 30 ousts the jurisdiction of the Court in certain matters. The object of this section is to avoid conflicting decisions of the Civil and Revenue Court upon the same matter. Two proceedings should not go on simultaneously for the determination of the same matter.

Sub-section (1) provides that after an order has been made under section 17 directing the preparation or revision of a record-of-rights in any area, no Civil Court shall entertain any suit or application in that area in the following matters :-

(a) for the alteration of rent, or

(b) for the determination of the status of any tenant, or

(c) for the determination of the incidents of any holding or tenancy.

If any suit or application is pending relating to these matters before a Civil Court on the date of the order under section 17, it shall not be further proceeded with and shall abate. In this sub-section a suit includes also an appeal.

Under sub-section (2) no suit can be brought in any Civil Court in respect of any order directing the preparation or revision of record-of-rights or in respect of framing, publication, signing or alteration of such record or any part of it.

Sub-section (3) provides that no suit, appeal or proceeding relating to any land in any Civil Court or High Court nor any order passed in such suit, appeal or proceeding will operate as a bar in any way to the preparation or revision of record-of-rights or of compensation assessment-rolls in accordance with the provisions of this Act.

It is no doubt true that this section bars the jurisdiction of the Civil Court in respect of the matters mentioned therein but not in respect of any suit declaring the title to and possession of any land which has been specifically provided in section 54 of the Act.[87] A suit for a declaration that the tenant is entitled to certain tenancy right in respect of a particular land is a suit purely for the declaration of his title to the land.[88] Such a suit not being for a declaration of any question relating to his status as a tenant is not barred by the provision of this section.[89] The Revenue-officer, when preparing the record-of-rights or compensation assessment-rolls, cannot ignore the final orders or decrees of a Civil Court making such declaration.[90]

In the case of *Abdul Mannan v. Mafizuddin*,[91] the special Judge held that the Assistant Settlement officer in disposing of an appeal under section 19(2) of the Act passed a wrong order and directed the party affected by it to seek relief in a competent Court. In the opinion of the High Court this is perfectly a legal order and the Court has got jurisdiction to entertain the suit.[92]

In the case of *Mofizur Rahman v. Province of East Pakistan*,[93] the Revenue authority started proceedings under section 20(1) of the Act against the father for the acquisition of his excess lands and included the lands in possession of the

87. *Safiuddin v. Moslem Ali* (1960) 12 D. L. R. 266; *Abdul Mannan v. Mafizuddin* (1958) 10 D. L. R. 527.
88. *Safiuddin v. Moslem Ali* (1960) 12 D. L. R. 266.
89. *Ibid*
90. *Ibid*
91. (1958) 10 D. L. R. 527
92. *Abdul Mannan v. Mafizuddin* (1958) 10 D. L. R. 527.
93. (1961) 13 D. L. R. 538.

son on the ground that those lands also belong to the father, the son being merely a *benamdar* of the father. The father and the son lived in two separate villages and lands were recorded in possession of both separately in the record-of-rights. The son as plaintiff brought a declaratory suit against the decision of the Revenue authority praying that the order of the said authority is illegal, void and without jurisdiction. It was contended on behalf of the Government that the suit was not maintainable in view of the provisions of section 19(3) and section 30 of the Act. But it was held that the plaintiff is not bound by the proceedings started against his father as he is not a party to the proceedings and in the absence of evidence that the plaintiff was aware of the preparation of record-of-rights, both the contentions fail.

The jurisdiction of a Civil Court cannot be taken away by implication. So far as the ouster of jurisdiction is concerned the legislature must do so by express provision made in that behalf. The ouster of jurisdiction should not be lightly inferred.[94]

A reference to some cases decided under section 111 of the Bengal Tenancy Act, 1885 may throw some light on the point. That section is analogous to section 30 of the present Act and provides for stay of proceedings in Civil Court during preparation of record-of-rights. In the case of *Troylkhyanath v. M. N. Macleod*,[95] it was held by Stevens and Pratt JJ. that a suit for possession on the allegation that the defendant was a trespasser and not a tenant cannot be stayed under section 111 of the Bengal Tenancy Act because it cannot be said to be a suit for the determination of the status of tenant. In the case of *Rajaram v. Sheo Prosad*,[96] it was held by Maclean C. J. and Mookerjee J., that a suit for ejectment on the ground that the defendant was a trespasser was not one for the alteration of the rent or the determination of the status of any tenant within the meaning of section 111 of the Bengal Tenancy Act

94. *Safiuddin v. Moslem Ali* (1960) 12 D. L. R. 266.
95. (1900) I. L. R. 28 Cal. 28.
96. (1906) 3? C. L. J. 63 notes porti[illegible]

and was consequently not barred under that section. Similarly in the case of *Kshemananda v. Rashamaya*,[97] an ejectment suit was brought against the defendant alleging that he was an under-*raiyat* and that notice had been given under section 49 of the Bengal Tenancy Act. The defendant by his written statement claimed to be an occupancy-*raiyat* and contended that by section 111 of the Bengal Tenancy Act, the proceedings against him should be stayed until three months after the final publication of the record-of-rights. It was held by Rankin C. J., and Costello J., that section 111 does not apply. Section 111 does not mean that in any case where the tenant choose to raise a question as to status, the landlord is prevented from taking action in the Civil Court under the ordinary law.

It is now evident that the test is to find out whether, in the proceeding before the Civil Court under section 30 of the Act, the matter in issue involves the question of alteration of rent or the incidents of any tenancy or the status of any tenant and, once that test is satisfied, the suit or proceeding must be stayed.

31. Preparation of Compensation Assessment-roll on the basis of the existing record-of-rights : (1) The Provincial Government may, instead of proceeding under section 17, by notification in the *official Gazette*, order that a Compensation Assessment-roll be prepared under Chapter V in respect of any particular district, part of a district or local area, on the basis of the record-of-rights last prepared and finally published under Chapter X of the Bengal Tenancy Act. 1885 [or Chapter IX of the Sylhet Tenancy Act, 1936.][98] without any revision or after revising or recording only such particulars in such record as may be specified in such notification.

97. (1927) 32 C. W. N. 132.

98. The expression within scuare brackets was inserted by section 13 of the East Bengal State Acquisition and Tenancy (Amendment) Act.1952 (E. B. Act. VI of 1952)

(2) When an order is made under sub-section (1), Revenueofficer shall revise or record such particulars, if any, in accordance with such rules as may be made in this behalf by the Provincial Government and settle fair and equitable rents according to the principles laid down in sections 23, 24, [25, 25A][99] 26, 27 and 28 and shall then correct such record-of-rights so as to incorporate therein the particulars, if any, so revised or recorded and the fair and equitable rents so settled.

(3) A record-of-rights corrected under sub-section (2) shall be deemed to have been duly revised and finally published under this Chapter.

(4)[100] When an order is made under sub-section (1) in respect of any area, sections 105, 105A and 106 of the Bengal Tenancy Act, 1885, or sections 121, 122 and 123 of the Sylhet Tenancy Act, 1936, as the case may be, shall cease to apply to such area, and applications, suits or proceedings under those sections, pending on the date of such order, shall not be further proceeded with and shall abate.

Note : Section 31 provides for preparation of compensation assessment-roll on the basis of existing record-of-rights. This provision was made on the basis of the report of the Special Committee. They suggested that instead of revising the record-of-rights of the districts where it had been prepared under Chapter X of the Bengla Tenancy Act during the last ten years again according to the provisions of this Chapter—the revised record-of-rights already prepare in those districts should be adopted as the basis for the compensation rolls."

99. The figures, comma and letter within square brackets were substituted for the figures "25" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No. XLIV of 1958), Section 15.

100. Sub-section (4) was added by section 13 of the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act. VI of 1952).

CHAPTER –V

Assessment of compensation and acquisition of interests of rent-receivers and of certain other interests.

[This Chapter deals with the alternative method of acquisition of property by preparation of record-of-rights and compensation assessment-rolls. It came into force with effect from 1st August 1963.[1] Section 33 deals with the method of assessment of compensation and preparation of compensation assessement-roll. Under section 34 every cosharer in a tenure is required to be treated separately for the purpose of assessment and payment of compensation with certain exceptions. Section 38 provides for preparation of compensation assessment-roll of a rent-receiver having interests in more than one area. Section 35 and 36 furnish the method of calculating gross assets and net income of a rentreceiver. Under the latter section the recipient of *malikana* has been described as a recusant proprietor.[2] Section 37 declares the rates of compensation payable to rentreceiver on the basis of net-income of his property. Section 39 declares the rates of compensation for *khas* land and land held under *wakfs*, *wakf-alal-aulad*, *debutter* or any other trust on which any *hat* or *bazar* is held or which consists of any forest or fishery or which is used for a ferry. Section 40 directs the Revenue-officer to publish the draft of the compensation assessment-roll in a prescribed manner and within the prescribed limit. Section 41 gives the right of appeal against the order of the Revenue-officer to the superior Revenue authority. Section 42 provides for publication of final assessment-roll after disposal of all objections and appeals. Such rolls will be notified under section 43 for general information in the manner prescribed therein. Then section 44 sets out the consequences that ensue on the notification of the publication under sub-section (2) of section

1. *Province of East Pakistan v. Imam Sharif* (1966) 18 D. L. R. 276; *Md. Haratulla v. Md. Majid Baksh* (1967) 19 D. L. R. 630.
2. *Khondkar Ali Afzal v. Province of East Pakistan* (1966) 18 D. L. R. 184.

43. Section 45 lays down that the Revenue-officer should proclaim the consequences that have ensued on the publication of such notification. He should also direct the tenants to pay rent to the Provincial Government. Finally under section 46 the record-of-rights shall be printed and distributed free of cost to them.]

32. Interpretation : In this Chapter, a rent-receiver, proprietor or tenure-holder includes a rent-receiver, proprietor or tenure-holder, as the case may be, whose interests have been acquired under Chapter II.

33. Order for the preparation of a Compensation Assessment-roll : As soon as may be after a record-of-rights in respect of any district, part of a district or local area has been prepared or revised and finally published under Chapter IV, the Revenue-officer shall prepare in the prescribed form and in the prescribed manner a compensation Assessmentroll in which the gross assets and the net income of all rent-receivers within such district, part or area and the compensation to be paid in accordance with the provisions of this Act to all persons whose interests are acquired under this Chapter or under Chapter II, together with such other particulars as may be prescribed, shall be specified :

Provided [3] that it shall not be necessary to prepare, under this Chapter, a Compensation assessment-roll in respect of any property acquired under Chapter II, in respect of which a Compensation Assessment-roll has been prepared under Chapter VA.

Note : Section 33 provides for preparation of compensation assessment-roll after the publication of the record-of-rights. On the final publication of such assessmentroll, subject to certain exceptions the interest of all rent-receivers within the area to which such roll relates, including their interest in the lands in their *khas* possession, will vest

3. This proviso was added, after substituting a colon for the full-stop at the end of section 33 by section 14 of the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952).

absolutely in the Provincial Government.[4] The compensation assessment-roll should contain the following particulars:—(1) the gross assets and the net income of all rent-receivers, (2) compensation to be paid to all persons whose interests are acquired, and (3) other particulars as may be specified. The rules for calculating the gross assets and net income of a rentreceiver are provided in section 35. According to section 34 every co-sharer in a tenure shall be treated separately for the purpose of assessment and payment of compensation with the exception that in the case of a Hindu undivided family governed by the *Mitakshara* law, all rentreceivers included in the family shall be treated jointly. Another exception was added by the Amending Act of 1954 which provides that when more than one proprietor, tenureholder or other rentreceiver jointly holdrent-receiving interests and the total net income of such interests does not exceed five hundred rupees, such persons may be treated jointly for the purpose of assessment of compensation under this Chapter.

34. Separate treatment of proprietors, tenure-holders and other rent-receivers in assessment and payment of compensation : In preparing such Compensation Assessmentroll every proprietor, tenure-holder or other rentreceiver collecting rents in respect of any estate, tenure, holding or tenancy or part of any estate, tenure, holding or tenancy comprised within the area to which such roll relates shall, irrespective of whether he collects such rents separately or jointly with others, be treated separately for the purpose of assessment and payment of compensation under this Chapter :

Provided that in the case of a Hindu undivided family governed by the *Mitakshara* law, all rent-receivers included in such family shall be treated jointly for such purpose :

Provide[5] further that when more than one proprietor, tenure-holder or other rent-receiver jointly hold

4. *Jibendra Kishore v. Province of East Pakistan* (1957) 9 D. L. R. (S. C.) 21.
5. This further proviso was inserted, after substituting a colon for the full stop at the end of the existing proviso, by section 9 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act XII of 1954) which shall be deemed to have come into force on the 1st day of January, 1952.

rentreceiving interests and the total not ioncome of such interests does not exceed five hundred rupees, such proprietors, tenure-holders or other rent-receivers may be treated jointly for the purpose of assessment of compensation under this Chapter.

35. Calculation of gross assets and not income of rent-receivers : (1) For the purpose of preparation of the Compensation Assessment-roll under this Chapter—

(a) the gross assets of a rent-receiver shall be taken to consist of the aggregate of the rents and cesses which were payable to such rent-receiver by his immediately subordinate tenants—

(i) in the case of the interests acquired under Chapter II, for the agricultural year immediately preceding the notified date, and

(ii) in other cases, for the agricultural year immediately preceding that in which the record-of-rights is finally published under Chapter IV,

and where such rent-receiver is the proprietor of an estate or the holder of a tenure, also of the aggregate of the fair and equitable rents determined under Chapter IV for such of his *khas* lands as he retains possession of under section 20.

Provided that in the case of [a tenure-holder or][6] a *raiyat* or an under-*raiyat* or a non-agricultural tenant referred to in sections 24, [25, 25A],[7] 27 and 28, the rent fixed or determined for any land under the provisions of the said sections and entered in the record-of-rights finally published under Chapter IV shall, for the purposes of this clause, be deemed to be the rent payable for such land for such year by such [tenure-

6. The words within square brackets were inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 8.
7. The figures, comma and letter within square brackets were substituted for the figures "25" by the fast Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958), section 16.

holder or][8] *raiyat* or under-*raiyat* or non-agricultural tenant to his immediately superior landlord;

(b) the net income of a rent-receiver shall be computed by deducting from his gross assets the following :—

(i) the sums which were or are calculated as payable by such rent-receiver for such year as land revenue or rent and cesses to the Provincial Government or to his immediate landlord, as the case may be, in respect of the lands to which the gross assets relate;

(ii) the sum which was or is calculated as payable by such rent-receiver in respect of such assets for such year as tax under the Bengal Agricultural Income-tax Act. 1944;

(iii) the sum which was or is calculated as payable by such rent-receiver in respect of his income from non-agricultural lands included in such assets for such year as tax under the Income-tax Act. 1922;

(iv) the average annual expenditure, if any, incurred by such rent-receiver on account of maintenance of any irrigation or protective works in such lands; and

(v) collection charges not exceeding twenty *per centum* of the gross assets.

(2) In calculating the sums referred to in sub-clauses *(i)*, *(ii)* and *(iii)* of clause *(b)* of sub-section (1) or determining the expenditure and charges referred to in sub-clauses *(iv)* and *(v)* of the said clause, the Revenue-officer shall be guided by such rules as may be made in this behalf by the Provincial Government.

36. Net income of a recusant proprietor : Notwithstanding anything contained in section 35, in the case of a recusant proprietor of a temporarily settle private estate, the *malikana* payable to such proprietor in the agricultural year referred to in sub-clause *(i)* or sub-clause *(ii)* of clause (a) of sub-section (1) of section 35, as the case may be, shall be deemed to be the net income of such propretor computed under section 35.

What is *malikana* : In order to understand the nature of *malikana*, we cannot do better than to quote an extract from the Tagore Law Lectures delivered by S. C. Mitra on the Land Law of Bengal. It reads as follows[9] :—

"It is an allowance for proprietary right to a person who was the owner or proprietor. The rules making the Decennial Settlement permanent directed that the proprietors, who might finally refuse to enter into engagements for the amount of revenue required of them, should be allowed *malikana*, in consideration of their proprietary rights, at the rate of 10 *per cent* on the revenue, if the lands were let in farm. The amount of the *malikana* was payable by the farmer to the proprietor, in addition to the amount payable to the government as revenue, in instalments, according to the instalments of Government-revenue. The Collectors were to realise the *malikana* in the same way as Government-revenue, and the Government guaranteed the amount to the proprietors. In the event of the land being held *khas* by the Government, the *malikana* was payable by the Collector at the rate of 10 *per cent* on the net collections, after defraying the *malikana* and other charges. In Bengal proper instances of payment of *malikana* by the Government or any farmer are very rare, except in cases of temporary settlement, specially of lands gained by accretion and assessed under Act IX of 1847. Grants of *malikana* are largely to be found in Bihar.

"Regulation VII of 1822, enacted for ceded and conquered provinces and Cuttack, rescinded all provisions in the existing Regulations regarding the allowance known as *malikana*. This Regulation was extended to all other provinces in Bengal by Regulation IX of 1825. Under these Regulations, the rate of *malikana* was rquired to be fixed by the Board of Revenue but the rate was not to be under 5 nor above 10 *per cent* unless there was a special sanction by the

8. The words within square brackets were inserted by section 8 of the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance No.III of 1956).

9. S. C. Mitra, *The Land Law of Bengal, Tagore Law Lectures.*,1895 (Calcutta, 1921), p.p.141-43.

Government for a higher rate. The highest amount of revenue tendered by a farmer was the basis of calculation, and when no tender was made, the net realisation of the previous year. But the rules laid down in these Regulations had only prospective effect and did not affect *malikana*-holders who were entitled to *malikana* under Regulation VIII of 1793.

"*Malikana* is a distinct proprietary right and is an interest in land. But it is not rent, nor has it the elements which constitute the idea conveyed by the word "rent." A suit for *malikana* is a suit for money charged upon immovable property and the period of limitation is 12 years from the time when the money sued for becomes due."

It will not be out of place to quote Rule 154 of the Bengal Board's Miscellaneous Rule which runs as follows[10] :—

"154. "*Malikana* is of two kinds (vide Chapter XII, pages 98-100 of Mr. J. D. McNeile's memorandum on the Revenue Administration of the lower Provinces of Bengal, 1873.)—

"(1) *Malikana*, or proprietary allowance, granted for estates of which the settlement is not made with the proprietors. This is fixed for the term of the settlement.—*(a)* when tender of settlement is made to the proprietor, and his offer is not accepted, in which case the *malikana* is calculated on the amount of his offer, and *(b)* when tender of settlement is made to the proprietor, but settlement is refused absolutely without any offer being made, in which case the net collections of the year immediately preceding form the basis of calculation of the *malikana*. In both these cases also the amount of *malikana* is not dependent on collections. *Malikana* is fluctuating *(c)* when settlement is not offered to the proprietor, the *malikana* being then calculated on the net collections of each year.

"(2) *Malikana* which was allowed to *zaminders* in virtue of their right as proprietors, in consequence of the settlement of their estates, or lands out of their estates. This is a compensation permanently granted to proprietors, (a) on

10. Quoted in *Khandkar Ali Afzal v. Province of East Pakistan* (1966) 18 D. L. R. 184 at 186.

account of the settlement of their estates with others, on their refusal; (b) for lands given out of their estates rent free to others by royal or other grants, which were never subsequently resumed : and (c) for such lands which were subsequently resumed and assessed to revenue by Government and settled with the holders. It is of a pensionary nature, and does not depend on collections.

"*Malikana* of the first class is payable for a term of years only, that is, during the currency of a settlement. In cases (a) and (b) the amount is fixed, while in case (a) it may vary from year to year. *Malikana* of second class is permanent."

Whether *malikana* **is acquirable** : From our discussion of the nature of *malikana* it is now clear that *malikana* is a rent-receiving interest and it is acquirable under the provisions of the Act. In the case of *Khondkar Ali Afzal v. Province of East Pakistan.*[11] two questions were raised, viz, (1) whether *malikana* is acquirable; and (2) whether, on the publication of the general notifications of the 2nd April, 1956 issued under section 3 of the Act, *malikana* vests in the Provincial Government.

It ws contended on behalf of the petitioner that *malikana* is not a rent-receiving interest and it is not an interest of any of the other kinds which are acquirable under the Act. According to clause (23) of section 2 of the Act, rent-receiver means a proprietor or a tenure-holder. According to clause (20) of the same section, proprietor means "a person owing, whether in trust or for his own benefit, an estate or a part of an estate." Section 36 provides that notwithstanding anything contained in section 35, in the case of a recusant proprietor of a temporary settled private estate, the *malikana* payable to such proprietor in the agricultural year referred to in sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1) of section 35, as the case may be, shall be deemed to be the net income of such proprietor computed under section 35. This section is a clear indicator of the fact that the intention of the legislature was that *malikana* interest also would be

11. (1966) 18 D. L. R. 184.

acquired. On a close examination of the different provisions of the Act, it was held[12] that *malikana* is acquirable under Chapter V of the Act.

The recipient of a *malikana* has been described as a recusant proprietor in the Act.[13] In this view of the matter, the contention of the petitioner that it is not a proprietary right, is not accepted by the Court. It is a proprietary right and is an interest in land. Therefore, there is no escape from the conclusion that this right is acquirable under Chapter V of the Act.

Dealing with the second question that whether *malikana* vests in the Provincial Government on the publication of the general notification dated the 2nd April, 1956 issued under section 3 of the Act, the petitioner asserted that no compensation-roll in respect of the petitioner's right has been prepared. This assertion is not denied. In the case of *Shah Md. Elias Shah v. Province of East Pakistan*[14] a Division Bench of the Dhaka High Court held that, in order to acquire an interest which is acquirable under Chapter V, it is necessary to prepare compensation assessment-roll in respect of such a right. In this view of the matter it was held that the interest claimed by the petitioner, though acquirable, has not yet vested in the Provincial Government or has been acquired by it. The Government cannot refuse to continue payment of the *malikana* until the right is acquired under Chapter V of the Act. The interest is acquirable after the preparation of the compensation assessment-roll.

It was argued on behalf of the Provincial Government that, even if it is held that *malikana* claimed by the petitioner has not vested upon the Government, it is an encumbrance within the meaning of the Act and therefore, it disappeared on publication of the general notifications of the 2nd April, 1956. Encumbrance, in relation to any estate, tenure, holding, tenancy or land, means any mortgage, charge, lien, sub-tenancy, easement or other right or interest created by the

12. *Khondkar Ali Afzal v. Province of Bangladesh* (1966) 18 D. L. R. 184.
13. *Khondkar Ali Afzal v. Province of Bangladesh* (1966) 18 D. L. R. 184.
14. (1964) 17 D. L. R. 277.

holder thereof on such estate, tenure, holding, tenancy or land or in limitation of his own interest therein. It cannot be called a creation of the proprietor in limitation of his own interest in any estate, tenure, holding, tenancy or land. In this view the Court has refused to accept this argument.

[36A. Net Income of a Recipient of Sair Compensation Allowance :— Notwithstanding anything contained in section 35, in the case of a recipient of Sair Compensation Allowance, which was granted to holders of land as compensation on account of abolition of duties and taxes levied by them on land in the markets, the amount of Sair Compensation allowance payable annually to such recipient shall be deemed to be the net income of such recipient computed under section 35.]

37. Rates of compensation for rent-receiving interests : After the net income has been computed under section 35 and 36, the amount of compensation to be payable in respect of the acquisition of the interests of rent-receivers shall be determined as follows :—

(1) In the case where the rent-receiver is a proprietor of an estate, a holder of a permanent tenure or tenancy or a *raiyat* or an under-*raiyat*, the compensation payable in respect of the acquisition of the interests of such rent-receiver shall be determined on the basis of his total net income from rent-receiving interest in the Province in accordance with the following table, namely :—

Amount of the total net income in the Province	Rate of compensation payable
(a) Where the net income so computed does not exceed Taka 500.	Ten times such net income.
(b) Where the net income so computed exceeds Taka 500 but does not exceed Taka 2,000.	Eight times such net income or the maximum amount under item *(a)* above increased by the excess of the net income over the maximum net income under item *(a)* above, whichever is greater.

(c) Where the net income exceeds Taka 2,000 but does not exceed Taka 5,000.	Seven times such net income or the maximum amount under item *(b)* above increased by the excess of the net income over the maximum net income under item *(b)* above, whichever is greater.
(d) Where the net income exceeds Taka 5,000 but does not exceed Taka 10,000.	Six times such net income or the maximum amount under item *(c)* above increased by the excess of the net income over the maximum net income under item *(c)* above, whichever is greater.
(e) Where the net income exceeds Taka 10,000 but does not exceed Taka 25,000.	Five times such net income or the maximum amount under item *(d)* above increased by the excess of the net income over the maximum net income under *(d)* above, whichever is greater.
(f) Where the net income exceeds Taka 25,000 but does not exceed Taka 50,000.	Four times such net income or the maximum amount under item *(e)* above increased by the excess of the net income over the maximum net income under *(e)* above, whichever is greater.
(g) Where the net income exceeds Taka 50,000 but does not exceed Taka 1,00,000.	Three times such net income or the maximum amount under item *(f)* above increased by the excess of the net income over the maximum net income under *(f)* above, whichever is greater.
(h) Where the net income exceeds Taka 1,00,000.	Two times such net income or the maximum amount under the item *(g)* above increased by the excess of the net income over the maximum net income under *(g)* above, whichever is greater.

(2) In the case where the rent-receiver is the holder of a temporary tenure or of any other tenancy of a temporary duration, the compensation payable to such rent-receiver in respect of the acquisition of the interest of such rent-receiver shall be paid out of the compensation payable under this Chapter to the immediately superior landlord of such rent-receiver for the acquisition of the interest of such superior landlord; and the Revenue-officer shall apportion the compensation between the holder of such temporary tenure or tenancy and his immediately superior landlord subject to rules under this Act; and in making the apportionment the Revenue-officer shall take into consideration the unexpired period of the temporary tenure or tenancy; and

(3) In the case where the net income or any portion of the net income in respect of any estate, tenure, holding or tenancy wholly or partly held under *wakf, wakf-alal-aulad, debutter* or any other trust or legal obligation has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual, the compensation payable for the acquisition of the interests of any rent-receiver in respect of the net income or the portion of the net income so dedicated and applied shall, instead of being assessed under clause (1), be assessed in the prescribed manner as a perpetual annuity equal to such net income or portion of the net income, as the case may be.

Note : Section 37 declares the rates of compensation for acquisition of the rent-receiving interests. This section was challenged in the case of *Jibendra Kishore v. Province of East Pakistan.*[15] on the ground that it constitutes an infraction of the equality provision of the Constitution because it discriminates between one rent-receiver and another on the basis of total income and as such it off-ends against the provisions of Articles 5 and 15 of the Constitution of Pakistan, 1956. Article 5 provides that "All citzens are equal before law and are entitled to equal protection of law." The relevant portion of Article 15 states as follows :—

15. (1957) 9 D. L. R. (S. C.) 21.

"15. (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on which and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

(a) any existing law."

It was urged that since section 37 draws a distinction in the matter of compensation between income earning groups of rent-receivers, the provision is *ex facie* discretionary, and therefore, void. The rent-receivers whose income is low are given compensation at a high rate than those given to rentreceivers whose income is high irrespective of the value of the land acquired; and the compensation is given on the basis of net profits without taking into consideration of the market value of the properties. It was also argued that, neither any reasonable basis for this classification of rent-receivers for the purpose of compensation is stated in the Act, nor is such classification naturally referable to the object of the Act. The learned judges were not convinced with the arguments. It was held that the classification made under section 37 is justified on the general ground that "if the legislature once decides to abolish the system of private landlordism in agricultural land and the resources of the State are not sufficient to compensate the outgoing landlords, some means for the rehabilitation of the expropriated landlords have to be devised, and if, in its anxiety to rehabilitate such landlords, the legislature takes into consideration the net incomes of the persons whom it is intended to set on their feet, the classification based on such considerations must be considered to be a necessary result of bringing the expropriating provisions of the Act into action. Whatever also the expression 'equal protection of law' may mean, it certainly does not mean equality of operation of legislation upon all citizens of the state."

By sub-section (1) of section 37 the amount of compensation payable to expropriated rent-receivers is made to depend on their net incomes, the rate of compensation progressively decreasing as annual net income increases until when the annual net income amounts to one lakh of rupees. The rent-receiver is only entitled to twice the amount of his annual net income or the maximum amount admissible under the immediately preceding grade increased by the excess of net annual income over that grade, whichever is greater.

Sub-section (2) speaks of the compensation payable to a rent-receiver who holds a temporary tenure or a tenancy of a temporary duration. He will be paid out of the compensation payable to his immediate superior landlord. The Revenueofficer is required to apportion the compensation between them taking into consideration the unexpired period of the temporary tenure or tenancy. The manner of apportionment of compensation is provided in rule 50 which runs as follows :—

"50. The apportionment of compensation under clause (2) of section 37 between the holder of a temporary tenure or tenancy and his immediately superior landlord shall be made in the manner prescribed below :—

"(a) the total net income from such tenure or tenancy shall first be computed under section 35 on the basis of the assets payable to the holder thereof and the net income so computed shall, for the purpose of this rule be deemed to be the net income of the immediately superor landlord;

"(b) the amount of compensation payable in respect of such net income shall then be calculated at the rate applicable under section 37 to the total net income (including the net income computed under the next preceding clause), of the immediately superior landlord from all his rent-receiving interests in the Province;

"(c) out of the amount of compensation calculated under clause (b), the holder of the temporary tenure or tenure or tenancy shall get a sum equivalent to one-thirtieth of the amount of compensation so calculated multiplied bv the

number of complete years of the unexpired period of the temporary tenure or tenancy not exceeding thirty, and the immediately superior landlord shall get the balance, if any."

Sub-section (3) directs that where the net income or any portion of the net income in respect of any property held under *wakf, wakf-alal-aulad, debutter* or any other trust or legal obligation has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for the acquisition of such interests shall be assessed in the prescribed manner as a perpetual annuity equal to such net income or portion of the net income. The manner of assessment has been provided in rule 51 which runes thus :—

"51. (1) The annuity referred to in clause (3) of section 37 shall be equal to the amount calculated in accordance with the principles laid down in sub-rule (3) of rule 37 :

"Provided that —

"(i) where in the deed of *wakf, wakf-alal-aulad, debutter* or other trust, as the case may be, any specified amount or any portion of the net income plus the contribution payable under section 59 of the Bengal *Wakf* Act. 1934, from the property held under such deed has been reserved for expenditure on religious or charitable purposes, the annuity shall not exceed such amount or portion of the net income, and

"(ii) the annuity shall in no case, exceed the annul net income from such property as determined under section 35.

"(2) If the annual net income from such property as determined under section 35 is greater than the amount for which an annuity is admissible under sub-rule (1), the compensation shall be payable for the balance of the annual net income and shall be assessed under the ordinary rate admissible under clause (1) of section 37."

In the case of *Jibendra Kishore v. Province of East Pakistan* ,[16] Munir, C. J. of the Supreme Court of Pakistan observed that in view of the provisions of section 37(3), "the first effect of the acquisition of *wakf* or *debutter* property is that while the Provincial Government becomes the owner of the corpus of the property, the *mutwalli* or the *shebait* becomes entitled to an annuity equal to the net income or a portion of the net income of the property. This, however, is subject to the important qualification that the net income or portion of the net income of the estate must not only have been dedicated but exclusively applied to charitable or religious purposes and without any reservation of pecuniary benefit for any individual. From this two consequences follow. First, the pecuniary benefit which may have been reserved by the creator of the *wakf* for his descendants, and for himself as under the Hanafi Law, is completely wiped out; and second, a mere breach of trust by the *mutwalli* or the *shebait* in not applying as directed by the dedicator the income of the property to religious or charitable purposes causes the income so misappropriated to cease to be available for such purposes. Thus *wakf-alal-aulad* are directly hit by this provision as well as other religious or charitable institutions if their manager has not been applying the income of the property to the objects to which it was intended by the dedicator to be applied."

16. (1957) 9 D. L. R. (S. C.) 21.

38. Preparation of Compensation Assessment-roll in respect of a rent-receiver having interests in more than one area : If a rent-receiver holds rent-receiving interests in more than one area, the amount of compensation payable for the acquisition of such interests shall be calculated and the Compensation Assessment-rolls in respect of such interests shall be prepared in accordance with such rules as may be made in this behalf by the Provincial Government.

39. Rates of compensation for *Khas* lands : (1) Compensation to be payable to a rent-receiver, a cultivating *raiyat*, a cultivating under-*raiyat* or a non-agricultural tenant, in respect of the acquisition of lands in his *khas* possession which he is not entitled to retain under section 20, shall be determined in accordance with the following table :—

Class of lands	Rate of compensation payable.
(a) For lands used for agricultural or horticultural purposes including tanks.	Five times the net annual profit from such lands.
(b) For lands on which *hats* or *bazars* are held.	Five times the net annual profit from such *hats* or *bazars*.
(c) For lands which are cultivable or which are capable of cultivation on reclamation—	
(i) lands bearing any profit.	Five times the net annual profit from such lands or ten times the annual *raiyati*, rent for an equal area of cultivated land in the neighbourhood which the Revenue-officer may select as appropriate for the purpose, whichever is greater.
(ii) lands not bearing any profit.	Taka ten per acre.
(d)[17] For lands consisting of fisheries or forests or lands used for a ferry.	Five times the net annual profit from such lands.
(dl) For lands which consist of jungles or water courses or marshy tracts not being fisheries and sandy *chars* or other uncultivable lands other than lands, such as roads, pathways, common burial or cremation ground, rivers, *khals* and water courses, which the public may use by natural or customary right or right of easement.	Five times the net annual profit from such lands.

17. Items (d) and (d1) were substituted for the former item (d) by the E. B. State Acquisition and Tenancy (Second Amendment) Ord, 1960 (E. P. Ord.No.XII of 1960), s.7

Class of lands	Rate of compensation payable.
(e) For vacant non agricultural lands.	Five times the annual letting value of the lands to be determined in the prescribed manner.
(f) For lands with buildings– (i) lands	Five times the annual letting value of the land to be determined in the prescribed manner.
(ii) buildings	The actual cost of construction less depreciation both to be determined in the prescribed manner.

(1a)[18] Notwithstanding anything contained in sub-section (1), the compensation payable for the acquisition of any *khas* land held under *wakf, wakf-alal-aulad, debutter* or any other trust on which any *hat* or *bazar* is held or which consists of any forest or fishery or which is used for a ferry and which is exclusively dedicated, and the income from which is exclusively applied to religious or charitable purposes without reservation of pecuniary benefit for any individual, shall, instead of being determined in accordance with the table in that sub-section, be assessed as a perpetual annuity equal to such annual average of the income so applied as may be determined in the prescribed manner but not exceeding the net annual profit from such land as may be determined in accordance with the provisions of this section :

Provided that where, under any *wakf, wakf-alal-aulad, debutter* or any other trust, the income from any such land is partly dedicated for religious or charitable purposes and partly reserved for the pecuniary benefit of any individual, only such portion of the land, as may be selected in accordance with the rules to be made in this behalf by the

18. Sub-section (1a) was inserted by the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord. No. XII of 1960), s.7.

Provincial Government, shall come within the purview of this sub-section.

(2) Any dispute regarding classification of lands for the purposes of [sub-sections (1) and (1a)][19] shall be referred to the prescribed Revenue Authority whose decision thereon shall be final.

(3) For the purpose of items *(a)* and *(c)*, sub-section (1) the net annual profit from land shall be determined in the following manner :—

(a) the gross value of the annual produce of the land shall be calculated first by multiplying the normal annual produce of the land, determined in the prescribed manner, by the average price of each kind of produce during the 10 years immediately preceding the year in which the assessment-roll is prepared;

(b) the net annual profit shall be computed by deducting from the gross value of the annual produce of the land, the following :—

(i) the sum determined in the prescribed manner as the cost of cultivation which shall not exceed fifty *per centum* of the gross value of the annual produce of the land;

(ii) the sum which is calculated as payable by the rentreceiver or cultivating *raiyat* or cultivating under-*raiyat* or non-agricultural tenant annually as land revenue or rent and cesses in respect to the land;

(iii) the sum which was or is calculated as payable by such rent-receiver or cultivating *raiyat* or cultivating under-*raiyat* in respect of the income from such lands as taxes under the Bengal Agricultural Income-tax Act, 1944, and

(iv) the sum which was or is calculated as payable by such a rent-receiver or non-agricultural tenant in respect

19. These words, brackets, figures and letter were substituted for the word, brackets and figure "sub-section (1)" by the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord. No.XII of 1960), s.7.

of the income from the lands as taxes under the Income-tax Act, 1922.

(4) For the purposes of items [*(b)*, *(d)* and *(d1)*[20] of sub-section (1), the net annual profit shall mean the net annual profit as determined by the Revenue-officer in accordance with the rules made in this behalf by the Provincial Government.

(5) Where the land, held by a cultivating *raiyat* or a cultivating under-*raiyat* or a non-agricultural tenant, for which compensation is payable under sub-section (1), is subject to a mortgage, the compensation payable under the said sub-section to such cultivating *raiyat* or cultivating under-*raiyat* or non-agricultural tenant shall be apportioned between such *raiyat* or under-*raiyat* or tenant and his mortgagee; and the Revenue-officer shall apportion such compensation in accordance with rules made in this behalf under this Act; and in making the apportionment the Revenue-officer shall, in the case where the mortgage is an usufructuary mortgage, take into consideration the unexpired period of such mortgage.

Note : Section 39 declares the rates of compensation for acquisition of *khas* lands. Sub-section *(I)* lays down that a rent-receiver, a cultivating *raiyat*, an under-*raiyat* or a non-agricultural tenant will get compensation at the rate mentioned therein for the acquisition of his *khas* lands of which he is not entitled to retain under section 20. The class of *khas* land for which compensation is provided is mentioned in clauses (a) to (f). Sub-section *(1a)*, inserted by the East Pakistan Ordinance No.XII of 1960, provides that compensation payable for the acquisition of any *khas* land held under *wakf*, *wakf-alal-aulad*, *debutter* or any other trust on which a *hat* or *bazar* is held or which consists of any forest or fishery or which is used for a ferry and which is exclusively dedicated, and the income from which is exclusively applied

20. The word, brackets, letters, figure and comma "*(b)*, *(d)* and *(d1)*" were substituted for the word, brackets and letters "*(b)* and *(d)*" by E. P. Ord. No.XII of 1960). Section 7.

to religious or charitable purposes without reservation of pecuniary benefit for any individual, will be assessed in the form of a perpetual annuity. The annuity will be equal to such annual average of the income so applied as may be determined in the prescribed manner but not exceeding the net annual profit from such land as may be determined in accordance with the provisions of this section.

Sub-section (2) provides that in case of any dispute regarding the classification of lands, the matter shall be referred to the Revenue authority whose decision shall be final.

Sub-section (3) gives the clue for determining the net annual profit of lands used for agricultural or horticultural purposes and lands which are cultivable or which are capable of cultivation on reclamation. The compensation will be assessed on the basis of the net annual profit.

Under sub-section (4) the Revenue-officer has been authorised to determine the net annual profit of lands on which *hats* or *bazars* are held, or which consists of fisheries or forests or which are used for ferry or which consist of jungles or water course or marshy tracts or other uncultivable lands.

The net annual profit of certain classes of lands mentioned in section 39(1) will be determined according to rules 53 and 54. Rule 53 states as follows :—

"53, (1) In determining the normal annual produce of land under clause *(a)* of sub-section 3 of section 39, the Revenueofficer shall have regard to the principles laid down in sub-rules (2) to (5) of rule 29.

(2) The cost of cultivation of any crop under sub-clause *(i)* of clause *(b)* of sub-section (3) of section 39, shall, subject to the maximum laid down in that sub-clause, be the cost generally incurred in the locality for the cultivation of such crop by hired labour, which shall be ascertained by the Revenue-officer by local enquiry.

(3) For determining the deductions to be made under subclauses *(ii)*, *(iii)* and *(iv)* of clause *(b)* of sub-section (3) of

section 39, the Revenue-officer shall, as far as may be, follow the procedure laid down in rule 49."

Rule 54 provides thus :—

"54. *(1)* For the purpose of determining, under sub-section (4) of section 39, the net annual profit from any *hat, bazar* or land mentioned in items *(b)* and *(d)* of sub-section *(l)* of that section, the Revenue-officer shall issue a notice calling upon the person, in whose name compensation Assessment-roll will be prepared, to file, within a month of the service of the notice, a statement, supported by documentary evidence, if any, showing the gross and net profits derived by him from such *hat, bazar* or land during the last five years or, where the *hat* or *bazar* exists for less than five years, during the entire period elapsed since the establishment thereof. After examining such statement, if filed within that period, and making such enquiries as he thinks fit and also after giving such person an opportunity of being heard, the Revenueofficer shall ascertain the amount of the annual average gross profits derived by such person from such *hat, bazar* or land during the periods as aforesaid and then determine the annual average net profit after deducting from the annual average gross profit the revenue or rent, cesses, rates and taxes including income tax and agricultural income-tax payable by such person in respect of, and collection charges and all other expenditure necessary for deriving profits from, such *hat, bazar* or land.

"(2) The annual average net profit as determined under sub-rule (1) shall be deemed to be the net annual profit from such *hat, bazar* or land for the purpose of assessment of compensation under sub-section (1) of section 39."

Sub-section (5) speaks of apportionment of compensation money between the mortgagor and the mortgagee when the land for which compensation is payable is subject to a mortgage. The apportionment will be made by the Revenueofficer and the manner of apportionment is provided in rule 56 which runs as follows :—

"56. Where the land, held by a cultivating *raiyat* or a cultivating under-*raiyat* or a non-agricultural tenant, for

which compensation is payable under sub-section (l) of section 39, is subject to a mortgage, the compensation payable under the said sub-section to such cultivating raiyat, cultivating under-*raiyat* or non-agricultural tenant shall be apportioned between such person and his mortgagee in the following manner :—

(a) one-half of the compensation shall always be payable to the cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant; and

(b) the mortgage money with the interest legally payable up-to-date in the case of a mortgage carrying interest or the profits for the unexpired period of the mortgage in the case of a usufructuary mortgage to be determined by the Revenue-officer in such manner as he thinks fit, shall be payable to the mortgagee out of the remaining one-half of the compensation, and the remainder of the compensation, if any, shall be payable to such *raiyat*, under-*raiyat* or tenant, in addition to the amount mentioned in clause (a)."

40. Preliminary publication of Compensation Assessment-roll : (1) After the amount of compensation to be payable in respect of the acquisition of the interests of rent-receivers and of the acquisition of the *khas* lands of rent-receivers, cultivating *raiyats*, cultivating under-*raiyats* and non-agricultural tenants, which are to be acquired under this Chapter or have been acquired under Chapter II, has been determined in accordance with the provisions of sections 37, 38 and 39, the Revenue-officer shall prepare the Compensation Assessment-roll under section 33; and when such roll has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period which shall not be less than thirty days and shall receive and consider any objection which may be made to any entry therein or to any omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Provincial Government may make in this behalf :

Provided[21] that no objection shall be made under this section—

(i) by any person who does not claim any title to any compensation entered in the draft Compensation Assessment-roll, or

(ii) to the amount of any rent entered in such roll which has been determined under section 5 or under Chapter IV or under sub-section (2) of section 46A.

(2) Separate draft Compensation Assessment-rolls may be prepared and published under sub-section (1) for different villages or groups of villages in the district, part of a district or local area or for one or more persons having interests in different areas in respect of which a record-of-rights has been prepared or revised and finally published under Chapter IV.

Note : Section 40 contemplates for preliminary publication of compensation assessment-roll. This section should be read along with sections 41 and 42. Sub-section (1) of section 40 provides that the Revenue-officer shall prepare the compensation assessment-roll after the amount of compensation has been determined in accordance with the provisions of sections 37, 38 and 39. When such roll has been prepared he shall cause a draft of it to be published in the prescribed manner and for the prescribed period[22] which shall not be less than 30 days. He is to receive and consider any objection relating to any entry therein or to any omission therefrom during the period of publication and to dispose of such objections in the same manner as prescribed in rule 32.[23]

In case of *Brojendra v. Province of East Pakistan*,[24] the petitioner complained that he represented before the

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21. This proviso was inserted, after substituting a colon for the ful-stop at the end of sub-section (1) of section 40, by section 10 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act XII of 1954), which shall be deemed to have come into force on the 1st day of January, 1952.
22. See rule 57(1).
23. Rule 57(2).
24. (1958) 9 P.L. R. (Dhaka) 766. =11 D.L.R.128.

authorities that his *hat* and *jalkars* were acquired illegally by the Government. The Manager of the acquired Estate took possession of all the papers relating to his properties which were acquired. So he could not produce the papers before the authority concerned for determination of the amount of compensation. He requested the authorities to look into the papers which were in their custody at the time of assessment of compensation. But they neither looked into those papers nor did the Government produce them before the authorities at the time of assessment of compensation.

It was contended on behalf of the petitioner that inasmuch as the papers were taken away by the Government from the ex-proprietor, it was for the Govrnment to place those papers before the authorities concerned so that they could determine the amount of compensation on the basis of those records.

It was pointed out on behalf of the Government that the petitioner did not even submit returns under section 39 of the Act though he was called upon to do so by the Government not did the petitioner at any stage ask for the inspection of the papers in possession of the Government or ask for copies of any paper on payment of the prescribed *fees*.

It was held by Amin Ahmed C. J., that in the absence of evidence either oral or documentary the petitioner is not entitled to any relief and cannot claim that the Government should have produced the records simply because at the time of the proceedings before the authorities below he made a prayer for the same. The onus of proving the objection taken by the petitioner is clearly on him.[25]

Under the proviso to this sub-section no objection can be made by any person who does not claim any title to any compensation entered in the draft compensation-roll.[26] or to the amount of any rent entered in such roll. But when a compensation is claimed by one party against another under proviso (*i*) of this sub-section, he can file an objection under section 41 before the Revenue authority and can also prefer an

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25. *Brojendra v. Province of East Pakistan* (1958) 11 D. L. R. 128.
26. *Ibid.*

appeal against his order to the superior Revenue authority and then under section 51 to the Special Judge and therefrom to the High Court by way of reference.[27] A civil suit will be challenging the legality of acquisition.[28]

Section 42 speaks of the final publication of the compensation assessment-roll after all objections and appeals have been disposed of. After disposal of objections and appeals the Revenue-officer shall make such alterations in the draft compensation assessment-roll as may be necessary to give effect to any order passed on objections and appeals and shall publish the final compensation assessment-roll in the same manner and for the same period as prescribed in rule 35.[29] Once the assessment-roll is published finally such publication shall be conclusive evidence that the compensation assessment-roll has been duly made under Chapter V of the Act, and every entry in the compensation-roll except as otherwise provided in the Act shall be final and conclusive evidence of the matter referred to in the entry and the nature of interest of the rent-receiver.[30]

41. Appeal to superior Revenue Authority : An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer under sub-section (1) of section 40 to the prescribed superior Revenue Authority; and such superior Revenue Authority shall consider and dispose of such appeals in accordance with rules made in this behalf by the Provincial Government.

42. Final publication of the Compensation Assessment-roll : When all such objections and appeals have been disposed of, the Revenue-officer shall make such alterations in the draft Compensation Assessment-roll as may be necessary to give effect to any orders passed on objections made under sub-section (1) of section 40 or on appeals preferred under section

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27. *Ibid*, see also rule 58.
28. *Ibid.*
29. Rule 59.
30. *Brojendra v. Province of East Pakistan* (1958) 11 D. L. R. 128.

41 and shall cause the said roll as so altered to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the Compensation Assessment-roll has been duly made under this Chapter, and every entry in the Compensation Assessment-roll so finally published shall, except as hereinafter provided, be final and conclusive evidence of the matter referred to in such entry and also of the nature of the interests of the rent-receivers, the true area of the land and the apportionment of the compensation among the persons claiming interest therein.

43. Certificate and presumption as to final publication of Compensation Assessment-roll : (1) When a Compensation Assessment-roll has been finally published under section 42, the Revenue-officer shall, within such time as the Commissioner may, by general or special order-require, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.

(2) After the final publication under section 42 of the Compensation Assessment-roll in respect of any village or group of villages or local area, the Provincial Government shall also by notification declare that a Compensation Assessment-roll has been finally published for such village or group of villages or local area, as the case may be, specifying in such notification the date of such final publication; and such notification shall be conclusive proof of such publication and of the date thereof.

44. Acquisition and vesting of the interest of proprietors, tenure-holders and other rent-receivers and of certain *khas* lands in the Provincial Government and the consequences thereof : Notwithstanding anything contained in any other law for the time being in force or in Chapter II of this act or in any contract, but subject to the provisions of clauses *(a)*, *(b)*, *(c)* and *(d)* of sub-section (4) of section 3 [and sub-section (3) of section 46E],[31] on the publication of a notification in the *Official Gazette* under sub-section (2) of section 43, declaring that a Compensation Assessment-roll has been finally published, the following consequences shall ensue, namely:—

(1) all the interests of all the proprietors in their respective estates, of all the tenure-holders in their respective tenures and of all other rent-receivers in the holdings or tenancies respectively let out by such rent-receivers within the area to which such roll relates or in such parts of such estates, tenures or holdings, or tenancies, as the case may be, as are within such area including the interests of all such proprietors, tenure-holders and other rent-receivers in all lands comprised in such estates, tenures and holdings or tenancies or part of such estates, tenures and holdings or tenancies within such area which are in the *khas* possession of such proprietors, tenure-holders and other rent-receivers and the interests of all such rent-receivers in all sub-soil including any rights to minerals in such estates, tenures and holdings or tenancies within such area other than the interests which have already been acquired under Chapter II [or sub-section (3) of section 46E][31] shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the *official Gazette*, be deemed to have been acquired by the Provincial Government and vest absolutely in the Provincial Government free from all encumbrances but subject to the rights of such proprietors, tenure-holders and other rent-receivers specified in clause (2);

(2) each proprietor, tenure-holder and other rent-receiver, whose interests in any estate, tenure or holding or tenancy or in any part of any estate, tenure or holding or tenancy, as the case may be, within the area to which such roll relates, are acquired under this Act, shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the *Official Gazette*, be entitled to retain possession of and hold, subject to the provisions of this Act, as a tenant directly under the Provincial Government all lands of which he is entitled to retain possession under Chapter IV and, be liable to pay rent for such lands to the Provincial Government ;

31. The words, figures, brackets and letter within square brackets were inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 9.

(3) the interests of all cultivating *raiyats*, cultivating under-*raiyats* and non-agricultural tenants in all lands held by such *raiyats*, under-*raiyats* and non-agricultural tenants within the area to which such roll relates in excess of the lands of which such *raiyats*, under-*raiyats* or non-agricultural tenants are entitled to retain possession under Chapter IV, including the interests in the sub-soil of all lands so held in excess and all rights to minerals therein [other than the interests which have already been acquired under any other provision of this Act][32] shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the *Official Gazette*, be deemed to have been acquired by the Provincial Government and vest absolutely in the Provincial Government free from all encumbrances;

(4) all cultivating *raiyats*, cultivating under-*raiyats* and other tenants holding lands, within the area to which such roll relates, immediately before the first day of the agricultural year next following the date of such publication of such notification, shall, with effect from the first day of the said agricultural year, [if they have not already become tenants directly under the Provincial Government under any other provision of this Act,][33] become tenants directly under the Provincial Government and shall have the right to continue to hold, subject to the provisions of this Act, as tenants under the Provincial Government, such of those lands as have not vested in the Provincial Government under item (3) [or under any other provision of this Act][34] and shall be liable to pay rent to the Provincial Government in respect of the lands so continued to be held ,

32. The words within square brackets were inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 9.
33. The words and comma within square brackets were inserted by E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ord. III of 1956), section 9.
34. The words within square brackets were inserted by section 9, *ibid*,.

(5) all arrears of revenue and all cesses together with interest, if any, payable thereon other than the arrears, cesses and interest referred to in clause (b) of sub-section (4) of section 3, remaining lawfully due on the first day of the agricultural year next following the date of such publication of such notification in respect of any estate within the area to which such roll relates shall, after the first day of the said agricultural year, continue to be recoverable from the outgoing proprietor by whom they were payable, and shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amount of such arrears and cesses and interst from the compensation money payable to such proprietor under this Act, when so ordered by the Collector;

(6) all amounts, recoverable by the Provincial Government from a rent-receiver under the Bengal Embankment Act, 1882 [or the East Bengal Embankment and Drainage Act, 1952],[35] which remain outstanding on the first day of the agricultural year next following the date of such publication of such notification and are not already covered by clause (d) of sub-section (4) of section 3, whether on account of arrear dues or dues under future instalments under the Bengal Embankment Act, 1882 [or the East Bengal Embankment and Drainage Act, 1952][35] shall, without prejudice to any other mode of recovery, be recoverable by deduction of the amount of such arrear and future instalments from the compensation money payable to such rent-receiver in respect of the interests or lands to which such outstanding amounts relate, when so ordered by the Collector;

(6a)[36] all arrears of agricultural income-tax recoverable by the Provincial Government from a person under the Bengal Agricultural Income-tax Act, 1944, which remain outstanding

35. The words, comma and figures within square brackets were inserted by the East Pakistan Repealing and Amending Ordinance, 1960 (E. P. Ord. XXVIII of 1960), First Schedule.
36. Clause (6a) was inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1959 (E. P. Ord. No. XXXIX of 1959), Section 5.

on the first day of the agricultural year next following the date of such publication of such notification and are not already covered by clause (dd) of sub-section (4) of section 3, shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amounts of such arrears from the compensation money payable to such person under section 58 in respect of the interests or lands to which such outstanding amounts relate, when so ordered by the Collector;

(7) all arrears of rent and all cesses, together with interest, if any, due thereon, in respect of any period previous to the first day of the agricultural year next following the date of such publication of such notification, which have accrued due in respect of any tenure, holding or land to which such roll relates, and which have not been barred by limitation or have not already vested in the Provincial Government under clause (c) of sub-section (4) of section 3, shall, on and from the first day of the said agricultural *year*, vest in and be recoverable by the Provincial Government and shall, without prejudice to any other mode of recovery, be recoverable from the person by whom they were payable by the deduction of the amount of such arrears, cesses and interest from the compensation money, if any, payable to such persons under section 58, when so ordered by the Collector;

(8) with effect from the first day of the agricultural year next following the date of such publication of such notification, the *ad interim* payments under section 6, in respect of the rent-receiving interests or lands for which compensation has been assessed in the Compensation Assessment-roll to which such notification relates, shall cease; and the total amount of *ad interim* payments made under sub-section (1) or (2) [or (4a)[37] of the said section in respect of any such interests or lands, less an amount calculated at the rate of three *per centum per annum* on the amount of compensation assessed for such interests or lands

37. The word, brackets, figure and letter "or (4a)" were inserted after the words, brackets and figures "sub-section (1) or (2)" by the East Bengal State Acquisition and Tenancy (Second amend-ment) Ordinance, 1961 (E. P. Ord. No.XIV of 1961), section 4.

in such roll from the date from which such *ad interim* payments for such interests or lands became payable under . . .[38] that section till the last day of the agricultural year in which such notification is so published, shall be deducted from the amount of such compensation.

Note : Section 44 provides for the acquisition of all acquirable interests including those of rent-receivers which have been left out after acquisition under section 3 of the Act. The latter section is neither a proviso nor an exception to section 44.[39] We have already considered that under that section the Provincial Government has acquired, by notifications, the interests of certain rent-receivers and *their khas* lands before the revision of record-of-rights and preparation of compensation assessment-roll. Under section 44 Government acquires all acquirable interests (other than those already acquired) after the revision of record-of-rights and preparation of compensation assessment-roll. This section sets out the following consequences that are to ensue after the publication of a notification in the Official Gazette under sub-section (2) of section 43, declaring that a compensation assessment-roll has been finally published :—

(1) All the interests of rent-receivers in their estates, tenures, holdings or tenancies shall, with effect from the first day of the agricultural year next following the date of publication of such notification, be deemed to have been acquired by the Provincial Government and shall vest absolutely in that Government free from all encumbrances but subject to the rights of such rent-receivers as specified in sub-section (2). Under that sub-section they are entitled to hold, as a tenant directly under the Government, all lands of which they are entitled to retain possession under section 20 subject to payment of rent to the Provincial Government.

(2) All lands held by cultivating *raiyats*, under-*raiyats* and non-agricultural tenants in excess of the prescribed limit

38. The words, brackets and figures "sub-section (1) or (2)" were omitted by E. P. Ord. No.XIV of 1961.
39. *Haji Altafuddin v. Province of East Pakistan* (1962) 14 D. L. R. 420.

shall, with effect from the 1st day of the agricultural year next following the date of publication, be deemed to have been acquired by the Provincial Government and shall vest absolutely in that Government free from all encumbrances. The words "in excess" mean whatever is non-retainable.[40] It may be noted in this connection that so far as the rent-receivers are concerned, their interests are to vest either from the date of notification of acquisition in 1956 or from the date mentioned in such notification under sub-section (2) of section 3 of the Act. But so far as *raiyats* and other tenants are concerned, their interests are acquired and vested in the Government on the notification of the final publication of the compensation assessment-roll by virtue of sub-section (3) of section 44.[41] The scheme of the Act, therefore, is that whatever is not retainable vests in the Government by operation of law and that too free from all encumbrances.[42] No fresh notification for the acquisition of non-retainable lands is necessary, because that will follow as a consequence of the publication of the notification under sub-section (2) of section 43, declaring that a compensation assessment-roll has been finally published.[43]

(3) All cultivating *raiyats*, under-*raiyats* and other tenants shall, with effect from the first day of the agricultural year next following the date of publication of such notification, become tenants directly under the Provincial Government in respect of lands they are allowed to retain under section 20 and they shall be liable to pay rent to that Government for those lands. The under-*raiyat* is thereby upgraded as a *raiyat*.[44]

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40. *Privince of East Pakistan v. Secretary M. A. S. Madrasa* (1964) 16 D. L. R. (S. C.) 281.
41. *Province of East Pakistan v. Secretary M.A. S. Madrasa* (1964) 16 D.L.R.(S.C.) 281; *Shah Md. Elias v. Province of East Pakistan* (1964) 17 D.L.R.727.
42. *Province of East Pakistan v. Secretary M.A.S. Madrasa* (1964) 16 D.L.R.(S.C.) 281.
43. *Ibid.*
44. *Rafiqul Islam v. Kazi Taibar Rahman* (1966) 18 D.L.R.475; *Priya Bala v. Fazar Ali* (1965) 18 D.L.R.480; *Arfan Ali v. Ead Ali* (1962) 14 D.L.R.791.

(4) All arrears of revenue and other dues outstanding to the Government, and all arrears of rent and cesses will be recovered out of the compensation money. This is an additional procedure without prejudice to any other mode of recovery. That is to say, this does not preclude other modes of recovery.

(5) The *ad interim* payments as provided under section 6 shall cease from the first day of the agricultural year next following the date of publication of notification and the total amount of such payments already made shall be deducted from the amount of compensation.

To sum up, a close reading of the provisions made in sections 42, 43 and 44 of the Act point to the inevitable conclusions, firstly that every interest which is liable to be acquired under the Act has to be paid for; and, secondly that except in the cases of acquisition under Chapter II of the Act, the interests which are acquirable vest in the Provincial Government only if assessment of compensation in regard to the same has been made and published as provided in the Act.[45] In other woral without assessment of compensation of the property, the acquirable lands cannot vest in the Provincial Government under section 44.

45. Proclamation by the Revenue-officer : As soon as may be after the publication of a notification in the *Official Gazette* under sub-section (2) of section 43, the Revenue-officer shall cause to be published, in the prescribed manner, in the area to which the Compensation Assessment-roll in respect of which such notification is published relates, a proclamation in the local vernacular—

(a) explaining the consequences which as provided in section 44 have ensued on such publication of such notification, and

(b) directing all persons in such area, who will become tenants under the Provincial Government with effect

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45. *Shah Md. Elias v. Province of East Pakistan* (1964) 17 D.L.R.277; *Mubasher Ali v. Md. Makbul Hasain* (1965) 15 P.L.R.(Dhaka) 487.

from the first day of the agricultural year next following the date of such publication of such notification, to pay rent to the Provincial Government and not to any body else.

46. Printing and distribution of record-of-rights : (1) After the Compensation Assessment-roll or Compensation Assessment-rolls in respect of all estates, tenures and interest of rent-receivers in holdings or tenancies comprised within a district, part of a district or local area, in respect of which a record-of-rights has been prepared or revised and finally published under Chapter IV, has or have been published, such record-of-rights shall be modified by climinating therefrom the entire chain of interests of rent-receivers and showing therein only the tenants who will come directly under the Provincial Government as a result of the acquisition of such interests; and one or more numbers to be borne on the revenue-roll of the district shall be assigned by the Collector in respect of the areas to which such record-of-rights relates in accordance with such rules as the Provincial Government may make in this behalf; and the record-of-rights so modified shall be reprinted.

(2) Copies of the record-of-rights so reprinted shall be distributed free of cost to the tenants of the areas to which such record-of-rights relates in such manner as may be prescribed.

CHAPTER –VA[1]

Special provisions for preparation of Compensation Assessment-rolls in respect of properties acquired under Chapter II.

46A. Preparation of Compensation Assessment-roll in special cases : (1) The Provincial Government may, instead of proceeding under section 17 or section 31, by notification in the *Official Gazette*, order that a Compensation Assessment-roll be prepared in respect of the properties of any rent-receiver acquired under section 3 on the basis of the returns, papers and documents furnished or taken possession of under sections 3A and 4.

(2) When an order is made under sub-section (1), the Revenue-officer shall verify such return, papers and documents in the prescribed manner and make such corrections therein as may be necessary, and settle fair and equitable rents of all tenants ***[2] immediately subordinate to such rent-receiver according to the principles laid down in sections 24, [25, 25A][3] 26 and 28.

(3) The Revenue-officer shall, after taking action under sub-section (2), prepare in the prescribed form and in the prescribed manner a Compensation Assessment-roll in which the gross assets and the net income of such rent-receiver and the compensation to be paid to him in accordance with the provisions of this Act, together with such other particulars as may be prescribed, shall be specified.

1. Chapter VA containing sections 46A, 46B, 46C, 46D and 46E was inserted by the E. B. State Acquisition and Tenancy (Amendment) act, 1952 (E. B. Act VI of 1952), section 15.
2. The words "except tenure holders" were omitted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 10.
3. The figures, comma and letter within square brackets were substituted for the figures "25 by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958, section 17.

46B. Bar to jurisdiction of Civil Court : After an order has been made under section 46A, no Civil Court shall entertain any suit or application for the alteration or determination of rent of any land for which fair and equitable rent is required to be settled under sub-section (2) of that section; and if any such suit or application is pending before a Civil Court on the date of such order, it shall not be further proceeded with and shall abate.

46C.[4] Application of the provisions of sections 34 to 43 in the preparation of Compensation Assessment-roll, under Chapter VA : In the matter of preparation and publication of a Compensation Assessment-roll under this Chapter,—

(a) the provisions of sections 34, 38 and 40 to 43 shall apply so far as they are applicable;

(b) the provisions of section 37 and 39 shall apply in whole; and

(c) the provisions of section 35 shall apply subject to the following amendment, namely :—

for clause (a) of sub-section(1) of section 35, the following clause shall be deemed to have been substituted, namely :—

"*(a)* the gross assets of a rent-receiver shall be taken to consist of the aggregate of the rents and cesses which were payable to such rent-receiver by his immediately sub-ordinate tenants for the agricultural year immediately preceding the notified date, and where such rent-receiver is the proprietor of an estate or the holder of a tenure, also of the aggregate of the fair and equitable rents determined under section 5 for such of his *khas* lands in that estate or tenure as he chooses to retain possession of under section 20 :

Provided that in the case of [a tenure-holder][5] or a *raiyat* or an under-*raiyat* or a non-agricultural tenant, the rent determined for any land, under sub-section (2) of section 46A,

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4. See foot-note 1 on p.145 *ante*.
5. These words were inserted by the E. B.State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 11.

According to the principles of section 24, [25 25A][6]and 28, shall, for the purposes of this clause, be deemed to be the rent payable for such land for such year by such *raiyat*, under-*raiyat* or non-agricultural tenant to his immediately superior landlord;"

46D.[4] Net income of a recusant proprietor under Chapter VA : Notwithstanding anything contained in clause (c) of section 46C, in the case of a recusant proprietor of a temporarily settled private estate, the *malikana* payable to such proprietor in the agricultural year immediately preceding the notified date shall be deemed to be the net income of such proprietor computed under the said clause.

46E.[7] Consequences of final publication of Compensation Assessment-roll under Chapter VA : Notwithstanding anything contained in Chapter II, on the publication of a notification under sub-section (2) of section 43, declaring that a Compensation Assessment-roll prepared under this Chapter, has been finally published, —

(1) all tenants who became tenants directly under the Provincial Government under clause (e) of sub-section (4) of section 3 shall, with effect from the first day of the agricultural year next following the date of publication of such notification, pay to the Provincial Government rent for the lands held by them at the rates determined under this Chapter;

(2) with effect from the first day of the agricultural year next following the date of such publication of such notification, the *ad interim* payments under section 6 or section 6A, in respect of the rent-receiving interests or lands for which compensation has been assessed in the Compensation Assessment-roll to which such notification relates, shall cease; and the total amount of *ad interim*

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6. The figures, comma and letter within square brackets were substituted for the figures "25" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No.XLIV of 1958), section 18.
7. See foot-note 1 on p.145 *ante*.

payments made under sub-section (1) or (2) [or(4a)][8] of section 6 in respect of any such interests or lands, less an amount calculated at the rate of three *per centum per annum* on the amount of compensation assessed for such interests or lands in such roll from the date from which such *ad interim* payments for such interests or lands became payable under ***[9] section 6 till the last day of the agricultural year in which such notification is so published, shall be deducted from the amount of such compensation;

(3)[10] with effect from the first day of the Agricultural year next following the date of such publication of such notification, the interest of a rent-receiver in all lands in his *khas* possession of which he is not entitled to retain possession under section 20 and for which compensation has been assessed in such Compensation Assessment-roll shall, if not already acquired under sub-section (2) of section 3, be deemed to have been acquired by the Provincial Government and vest absolutely in the Provincial Government free from all encumbrances.

Note : This Chapter makes special provisions for preparation of compensation assessment-roll in respect of properties acquired under section 3, by a notification in the *official Gazette* instead of proceeding under section 17 or section 31 of the Act.[11] Sub-section (1) of section 46A empowers the Provincial Government to prepare such a roll on the basis of the returns, papers and documents furnished

8. The word, brackets, figure and letter "or (4a)" were inserted after the words, brackets and figures "sub-section (1) or (2)" by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1961 (E. P. Ord. No.XIV of 1961), section 5.
9. The words, brackets and figures "sub-section (1) or (2)" were omitted, *ibid.*
10. Clause 3 was added, after substituting a semi-colon for the full-stop at the end of sub-section (2) of section 46E, by the East Bengal Sate Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act. XII of 1954), section 12.
11. *Arfan Ali v. Ead Ali* (1962) 14 D. L. R. 791; *Jadu Nath v. Province of East Pakistan* (1956) 13 D.L.R.496.

or taken possession of under section 3A and 4 of the Act. Sub-section (2) of the same section provides that in setting fair and equitable rents of all tenants immediately subordinate to rent-receiving interests, the principles laid down in section 24, 25, 25A, 26 and 28 appearing in Chapter IV of the Act are to be followed. Section 46B takes away the jurisdiction of the Civil Court in the matter of alteration or determination of rent of any land for which fair and equitable rent is required to be settled under sub-section (1). Section 46C provides that sections 34 to 43 will apply in the preparation of compensation assessment-roll. Section 46D lays down rules for the determination of the net income of a recusant proprietor of a temporary settled estate. Under this section the *malikana* payable to such proprietor in the agricultural year immediately preceding the notified date shall be deemed to be the net income of such proprietor. Section 46E sets out three consequence that are to ensue after the final publication of compensation assessment-roll under this Chapter :

(1) All tenants who have become tenants directly under the Provincial Government under clause (e) of sub-section (4) of section 3 shall pay rent at a revised rate to that Government with effect from the first day of the agricultural year next following the date of publication of the compensation assessment-roll.[12]

(2) The *ad interim* payments under section 6 or 6A shall cease and the total amount of *ad interim* payments made under sub-section (1) or (2) or (4a) of section 6 shall be deducted from the amount of compensation.

(3) The interest of a rent-receiver in all lands in his *khas* possession of which he is not entitled to retain possession under section 20 shall, if not already acquired under sub-section (2) of section 3, be deemed to have been acquired by the Provincial Government and shall vest absolutely in that Government free from all encumbrances.

12. *Secretary, M. A. S. Madrasa v. Province of East Pakistan* (1962) 15 D.L.R.37.

CHAPTER –VI

Authorities for the preparation of Compensation Assessment-roll.

47. Revenue and Judicial authorities : There shall be the following authorities for the purposes of this Part of this Act :—

(a) the Commissioner of State Purchase;

(b) the Director of Land Records and Surveys;

(c) Settlement Officers and Assistant Settlement Officers;

(d) Other Revenue-officers;

(e) Special Judges.

48. Appointments and powers : (1) The Commissioner of State Purchase shall be appointed by the Provincial Government.

(2) The Commissioner of State Purchase shall, in respect of the whole of [East Pakistan][1] exercise the powers conferred and perform the duties imposed on him by this Act and by such rules as may be made under this Act. He shall also exercise general powers of superintendence and control over the Director of Land Records and Surveys and through him over all other officers subordinate to him.

(3) The Director of Land Records and Surveys shall exercise such powers and perform such duties of a Revenue-officer under this Act or any rules made thereunder as may be conferred or imposed on him.

(4) The Provincial Government may appoint one or more persons who has or have exercised the powers of a District Judge or a Subordinate Judge to be a Special Judge or Special Judges for the purposes of hearing appeals which may be preferred to him or them under the provisions of this Act and of inquiring into disputes as to the title to receive any compensation under a Compensation Assessment-roll finally

1. The words within square brackets were substituted for the words "East Bengal" by the East Pakistan Repealing and Amending Ordinance, 1960 (E. P. Ord. XXVIII of 1960), First Schedule.

published under section 42 or as to the apportionment of any compensation referred to him under section 60.

Note : This Chapter specifies the authorities who are responsible for the preparation of compensation assessment-roll. According to section 47 the Revenue and Judicial authorities will consist of (1) the Commissioner of State Purchase, (2) the Director of Land Records and Surveys, (3) Settlement Officers and Assistant Settlement Officers, (4) other Revenue-officers and (5) Special Judges. Under sub-section (1) of section 48 the Commissioner of State Purchase shall be appointed by the Provincial Government. Sub-sections (2) and (3) lay down the functions of the Commissioner and the Director of Land Records and Surveys. Sub-section (4) empowers the Provincial Government to appoiont Special Judges for hearing appeals under the provisions of the Act and for determination of disputes regarding compensation. The District Judge or the Subordinate Judge appointed as a Special Judge is not a *persona designata* but a Court subordinate to the High Court and, as such his order is revisable under section 115 of the Civil Procedure Code.[2] We have already noted[3] that a claimant of compensation can file an objection before the Revenue authority, can prefer an appeal to the superior authority and then to the Special Judge and therefrom to the High Court by way of reference.

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2. *Abdul Manna v. Mafizuddin* (1958) 10 D.L.R. 527.
3. See pp. 66 and 156.

CHAPTER –VII

Revision of the Compensation Assessment-roll and the decision of disputes with regard to compensation.

[This Chapter deals with the revision of the compenseation assessment-roll and decision of disputes with regard to compensation. Section 49 authorises the Commissioner or any officer empowered by him to revise the compensation assessment-roll and the record-of-rights at any time during the preparation of such roll. He may direct such revision on an application made within three months from the date of final publication of such roll. He may also, of his own motion, direct such revision at any time before payment of compensation. But he cannot do anything which affects any order passed by the superior Revenue authority or by the Special Judge. Section 50 empowers a Revenue-officer to correct any entry in the record-of-rights prepared or revised and finally published under Chapter IV, if he is satisfied that such entry has been made owing to a *bona fide* mistake. Under section 54 he is allowed to make necessary correction in the compensation assessment-roll. Sections 51 and 53 make provision for appeal to the Special Judge who may refer under section 52 to the High Court any question of law arising out of his order. Section 55 has extended the provisions of the Civil Procedure Code, 1908 to all appeals presented to the Special Judge. Under section 56 no party to a suit, apeal or proceeding in a Civil Court or High Court in respect of any land shall be entitled to raise before a Revenueofficer, Revenue authority, Special Judge or the Commissioner or any other officer any issue in respect of such land, which is substantially in issue in such suit, appeal or proceeding.]

49.[1]Revision of Compensation Assessment-roll : The Commissioner, or any officer not inferor in rank to that of a

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1. Section 49 and the proviso to it were substituted for the former section 49 by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 12. The original section 49 as amended by E. B. Act. V of 1955 and the proviso thereto read as follows :—

Joint Deputy Commissioner[2] of a district empowered in this behalf by the Commissioner, or a Settlement Officer so empowered, may, on application, direct the revision of any Compensation Assessment-roll or any portion of such roll and any record-of-rights or any portion of record-of-rights on the basis of which such roll has been prepared, at any time during the preparation of such roll and may direct such revision on an application made within three months from the date of final publication of such roll and may also, of his own motion, direct such revision at any time before payment of compensation, but so as not to affect any order passed by the superior Revenue Authority under section 41 or by the Special Judge and section 51 or under sub-section (4) of section 52 or under section 53;

Provided that no such direction shall be issued unless not less than fifteen days' notice has been given to the parties concerned to appear and be heard in the matter.

50. Correction by Revenue-officers of *bona fide* mistakes : A Revenue-officer may, on application or of his own motion at any time before payment of compensation in accordance with a Compensation Assessment-roll under section 58,

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"49. Revision of the Compensation Assessment-roll by the Commissioner : The Commissioner, or any officer not inferior in rank to that of a Collector of a district, or a Settlement Officer, empowered in this behalf by the Commissioner may, on application or of his own motion, direct the revision of any Compensation Assessment-roll or any portion of such roll at any time during the preparation of such roll or within three months from the date of final publication of such roll but so as not to affect any order passed by the superior Revenue Authority under section 41 or by the Special Judge under section 51 or under section 53 or under sub-section (4) of section 52 :

Provided that no such direction shall be issued unless not less than 15 days' notice has been given to the parties concerned to appear and be heard in the matter."

2. The words Joint Deputy Commissioner were substituted for the word "Collector" by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E. P. Ord. No.VIII of 1967), section 4.

correct any entry in the record-of-rights prepared or revised and finally published under Chapter IV in respect of any area to which such compensation Assessment-roll relates, or any entry in such compensation Assessment-roll, if he is satisfied that such entry has been made owing to a *bona fide* mistake or correction of such entry is necessary as a result of succession to or transfer of the interest of a rent-receiver, cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant.

* * * 3

Provided that no such correction shall be made if an appeal affecting such entry has been presented under section 51 or section 53 or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

51. Appeal to the Special Judge : (1) Any person, aggrieved by an order of the superior Revenue Authority under section 41 or of the Commissioner or other officer under section 49 may present an appeal against such order within sixty days from the date of the final publication under section 42 of the Compensation Assessment-roll to which such appeal relates or of the order appealed against, whichever is later, to the Special Judge appointed under sub-section (4) of section 48.

(2) When a Revenue-officer refers under section 60 to any Special Judge any dispute which has arisen as to the title of any person to receive any compensation payable under the Compensation Assessment-roll or as to the apportionment of any such compensation or any part thereof, such Special Judge shall inquire into such dispute and decide the same; and such decision shall, subject to the provisions of section 52, be final.

52. Statement of case by Special Judge to the High Court : (1) Any party aggrieved by an order of the Special Judge may, within sixty days from the date of such order by application in the prescribed form accompanied, when the application is made by any party other than the Provincial Government, by

3. The words "whose name appears in such roll as a person entitled to compensation" were omitted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord.No.XLIV of 1958), section 19.

a fee of fifty rupees, require the Special Judge to refer to the High Court any question of law arising out of such order; and the Special Judge shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that, if in the exercise of the powers under sub-section (2) the Special Judge refuses to state a case which he has been required by any party other than the Provincial Government to state, such party may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw the application; and if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Special Judge refuses to state the case on the ground that no question of law arises, the party who made such application may, within sixty days from the date on which such party is served with notice of the refusal, apply to the High Court; and the High Court may, if it is not satisfied of the correctness of the decision of the Special Judge, require the Special Judge to state the case and to refer it; and on receipt of any such requisition the Special Judge shall state the case and refer it accordingly.

(3) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the High Court may refer the case back to the Special Judge to make such additions thereto or alterations therein as the High Court may direct in that behalf.

(4) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgement thereon containing the grounds on which such decision is founded, and shall send a copy of such judgement under the seal of the Court and the signature of the Registrar to the Special Judge who shall pass such orders as are necessary to dispose of the case conformably to such judgement.

(5) When a reference is made to the High Court, the cost shall be in the discretion of the Court.

Note : The provision in sub-section (1) of section 52 that reference to the High Court has to be made within 90 days is not mandatory but is directory. If a reference is not made within that time, it will not be a nullity.[4]

The provisions for reference to the High Court under the Act are almost the same as those under the Income Tax Act, that is, the proceedings of assessment before the Income Tax officer, those before the Appellate Assistant Commissioner or thereafter the proceedings before the Income Tax Appellate Tribunal and then a reference by the Tribunal to High Court under section 66 of the Income Tax Act.[5]

53. Appeal to the Special Judge : Any person aggrieved by an order of the Revenue Authority under sub-section (2) of section 19 passed on appeal filed in respect of the determination of rent or recording of possession of any land, or by an entry made in a record-of-rights under sub-section (2) of section 31 relating to the determination of rent or recording of possession of any land [or by an order settling fair and equitable rent of any land under sub-section (2) of section 46A].[6] may present an appeal against such order or entry, within three months from the date of the final publication under section 42 of the Compensation Assessment-roll to which such appeal relates, to the Special Judge appointed under sub-section (4) of section 48. The decision of the Special Judge on such an appeal shall, notwithstanding anything contained in section 52, be final.

Note : The word 'final' in section 53 means that no appeal lies against the decision of the Special Judge. But it does not take away the revisional powers of the High Court under section 115 of the Civil Procedure Code.[7] His decision is revisable by the High Court under that section.[8] The Special

4. *Brojendra v. Province of East Pakistan* (1958) 11 D.L.R.128.
5. *Brojendra v. Province of East Pakistan* (1958) 11 D.L.R.128.
6. The expression within square brackets was inserted by the East Bengal State Acquisition and Tenancy (Amendment) Act, 1952 (E.B. Act VI of 1952), Section 16.
7. *Abdul Manna v. Mafizuddin* (1958) 10 D.L.R.527 = 8 P.L.R.(Dacca) 861.
8. *Ibid.*

Judge is appointed under section 48(4) of the Act. Here appointment is not a *persona designata*, but a judicial officer who has exercised the powers of a District Judge or a Subordinate Judge, and he is to follow the procedure prescribed under section 55 and 75 of the Act. He is to determine and decide the rights of the parties. So he is a "Court under section 115 of the Code of Civil Procedure. In the instant case the Special Judge held that the Assistant Settlement officer, in disposing of an appeal under section 19(2), passed a wrong order and directed the party affected by the order to seek relief in a competent Court. It was held[9] that this is perfectly a legal order.

54. Correction of the Compensation Assessment-roll : The Revenue-officer shall make such alterations in the record-of-rights or the Compensation Assessment-roll as may be necessary to give effect to any direction issued by the Commissioner or other officer under section 49 or an order made by a Special Judge under section 51 or section 53 or under sub-section (4) of section 52 or to any final order or decree of a Civil Court or High Court passed in any suit, appeal or proceeding declaring title to and, or possession of any land.

55. Application of the Civil Procedure Code to appeals before and enquires by a Special Judge : The provisions of the Code of Civil Procedure 1908, shall, as far as may be, apply to all appeals presented to a Special Judge under sub-section (1) of section 51 or under section 53 and to all inquiries held by him under sub-section (2) of section 51.

56. Bar to raising of certain issues : No party to a suit, appeal or proceeding in a Civil Court or High Court is respect of any land shall, notwithstanding anything elsewhere contained in this Act, be entitled to raise before a Revenueofficer, Revenue Authority, Special Judge or the Commissioner or any other officer under sections 19, 40, 41, 49, 51, 53 or 60 any issue in respect of such land, which is substantially in issue in such suit, appeal or proceeding.

9. *Abdul Mannan v. Mafizuddin* (1958) 10 D.L.R.527.

CHAPTER -VIII

Payment of Compensation

[This Chapter deals with the payment of compensation to a rent-receiver for the acquisition of his interests. Section 57 puts a limit of the amount of compensation. A rent-receiver is not entitled to receive in excess of the amount calculated on his total not income from all his rent-receiving interests. Section 58 prescribes the manner of payment of compensation. Under this section the amount of compensation shall be paid in cash or in bonds or partly in cash or partly in bonds. The bonds shall be payable in not more than forty annual instalments. A reference has been made in section 59 in respect of money or bonds of the incompetent persons. The bonds or securities shall remain deposited with the Government till they are made over to any person or persons becoming absolutely entitled or they are mature. If there is no person to receive the bonds or securities after maturity, the Collector is to invest them in the purchase of Government or other approved securities. Under section 60 if any dispute arises as to the title of any person to receive any compensation, the Revenue-officer may refer such dispute to the Special Judge to enquiry into such disputes for decision.]

57. Limits of, and amount payable as compensation : (1) Notwithstanding anything contained elsewhere in this Act or in any Compensation Assessment-roll as finally modified under section 54, no rent-receiver shall be entitled to receive on account of compensation for the acquisition of his rent-receiving interests any amount in excess of the amount calculated on his total net income from all his rent-receiving interests in all estates, tenures, holdings and tenancies held by him within the Province at the rate applicable to such net income under section 37.

(2) When a rent-receiver holds rent-receiving interests in different areas, the Revenue-officer shall, before making payment under section 58 of the compensation payable to him under a compensation Assessment-roll as finally modified under section **54** for the acquisition of his rent-receiving

interests in any such area, ascertain in the prescribed manner if any amount has been paid to such rent-receiver on account of compensation for the acquisition of his rent-receiving interests in any other area or areas in excess of the amount admissible under sub-section (1) and, if any such excess payment is found to have been made, deduct the amount of such excess from the amount of the compensation payable to him under such roll for the acquisition of such interests :

Provided that no such deduction shall be made until a reasonable notice has been given to the rent-receiver to appear and be heard in the matter :

Provided further that an appeal, if presented within thirty days from the date of the order making such deduction shall lie against such order to the prescribed superior Revenue Authority whose order thereon shall be final.

(3) When any amount is deducted under sub-section (2) from the amount of any compensation payable to a rent-receiver under a Compensation Assessment-roll for the acquisition of his rent-receiving interests, the balance, if any, remaining after such deduction shall, for the purpose of section 58, be deemed to be the compensation payable to such rent-receiver in respect of such interests in the terms of the said roll.

Note : Under section 57 a rent-receiver is entitled to get compensation for the properties acquired under the Act at the rate provided in section 37. The rate of compensation decreases as the annual net income increases.

Under sub-section (1) no rent-receiver is entitled to receive compensation in excess of the amount calculated on his total net income from all his interests within the province. The manner of ascertaining the excess payment is contained in rule 65 which states as follows :—

"65. (1) Where a rent-receiver holds rent-receiving interests in more than one area for which separate Compensation Assessment-rolls are prepared, no deduction shall be made under sub-section (2) of section 57 in the case of the first payment of compensation under a Compensation Assessment-roll in respect of such interests, but the Revnue-

officer shall, immediately on such payment, forward a copy of such roll, with the details of the deductions made under sub-section (1) of section 58 and the amount of compensation actually paid under that section, to the Revenue-officers of other areas where such rent-receiver holds rent-receiving interests, or, if no Revenue-officer has been appointed at the time for any such area, to the Director of Land Records and Surveys for transmission to the Revenue-officer of such area when appointed.

"(2) Before making any subsequent payment of compensation to such rent-receiver for his rent-receiving interests in any area under a different Compensation Assessment-roll the Revenue-officer shall ascertain, with reference to the information furnished to him under sub-rule (1) and also sub-rule (3), if any, by the Revenue-officers of other areas, if any excess payment has been made in such other areas according to sub-section (1) of section 57 and, if so, shall deduct the amount of such excess from the amount of compensation payable to such rent-receiver under such roll in respect of such interests :

"Provided that before making any such deduction, the Revenue-officer shall issue a notice to the rent-receiver allowing him at least 15 days time to show cause, if any, against such deduction.

"(3) As soon as any subsequent payment of compensation is made to such rent-receiver under a Compensation Assessment-roll in respect of his rent-receiving interests, the Revenue-officer making such payment shall forward a copy of the roll, with the details of the deductions made under sub-section (2) of section 57 and sub-section (1) of section 58 and the amount of compensation actually paid under section 58, to the Revenue-officers of other area where such rent-receiver holds rent-receiving interests in respect of which the intimation of payment of compensation has not been received under sub-rule (1) or this sub-rule, or, if no Revenue-officer has been appointed at the time for any such area, to the Director of Land Records and Surveys for trnasmission to the Revenue-officer of such area when appointed.

"(4) When the Revenue-officer decides to make any deduction under sub-rule (2), he shall record an abstract of the reasons for such decision."

Sub-section (2) of section 57 provides that when a rent-receiver has rent-receiving interests in different areas the Revenue-officer, before making payment of compensation, is to ascertain whether any amount has been paid to him in excess of the amount admissible under sub-section (1). If any payment is made in excess, he will, after giving him a hearing deduct it from the amount of compensation. If the rentreceiver is aggrieved by the order of the Revenue-officer, he may prefer an appeal within 30 days front the date of the order to the Director of Land Records and Surveys[1] whose order will be final. Under sub-section (3) the balance that remains after deducting the excess amount shall be deemed to be the compensation payable to the rent-receiver.

58. Manner of payment of compensation : (1) When the time within which appeals under section 51 or under section 53 may be made in respect of any entry in or omission from a Compensation Assessment-roll has expired and, where any such appeal has been made under section 51, the time within which a reference may be made to the High Court under section 52 with regard to any order made by the Special Judge in relation to such appeal has also expired and all references made under section 52 in relation to all such appeals have been disposed of and all orders under sub-section (4) of that section arising out of such references have been passed and, where any appeal has been made under section 53, such appeal has been disposed of, the Revenue-officer shall proceed to make payment to the proprietors, tenure-holders or other rent-receivers and to the cultivating *raiyats*, cultivating under-*raiyats* and other persons, who are shown in such Compensation Assessment-roll as finally modified under section 54 to be entitled to compensation, of the compensation payable to them in the terms of the said roll after decuting from the amount of any compensation so

1. Rule 67.

payable any amount which has been ordered by the Collector to be so deducted under [clause *(b)*, *(c)*, *(d)* or *(dd)*[2] of sub-section (4) of section 3 or [clause (5), (6) (6a) or (7)[3] of section 44 and also any amount to be deducted from such compensation under clause (8) of section 44 [or clause (2) of section 46E][4] [or section 76B][5] and any amount recovrable from such compensation under Chapter X :

Provided that if a rent-receiver applied for scaling down his debts under Chapter X of this Act, only half of the total amount of compensation payable to him under a Compensation Assessment-roll, less any amount to be deducted under [clause *(b)*, *(c)*, *(d)* or *(dd)*][2] of sub-section (4) of section 3 or [clause (5), (6), (6*a*), (7) or (8)][6] of section 44 [or clause (2) of section 46E][4] [or section 76B],[5] shall be paid to him and the payment of the other half shall be withheld until such application is disposed of and all debts recoverable from compensation money under that Chapter are recovered in accordance with the provisions of sub-section (7) of section 71:

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2. The words, brackets, letters and commas within square brackets were substituted for the words, brackets, letters and comma "clause *(b)*, *(c)* of *(d)*" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1959 (E. P. Ord. No. XXXIX of 1959), section 6.
3. The words, brackets, figures, letter and commas within square brackets were substituted for the words, brackets, figures and comma "clause (5), (6) or (7)" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1959 (E. P. Ord. No.XXXIX of 1959), section 6.
4. These words, figures, brackets, and letter were inserted by the East Bengal State Acquisition and Tenancy (Amendment) Act., 1952 (E.B. Act.VI of 1952), section 17.
5. These words, figures and letter were inserted by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance No.III of 1956), section 13.
6. The words, brackets, figures, letter and commas within square brackets were substituted for the words, brackets, figures and commas "clause (5), (6), (7) or (8)", by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1959 (E.P. Ordinance No.XXXIX of 1959), section 6*(b)*.

Provided further that no compensation payable to any person under a Compensation Assessment-roll for any land with building shall be paid till the Provincial Government takes *khas* possession of such land and building.

(2) The amount of compensation so payable shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be non-negotiable and payable in not more than forty annual instalments to the person named therein or his successor-in-interest and shall carry interest at three *per centum per annum* with effect from the date of issue.

(3) If any person, entitled to receive such compensation in respect of any estate, tenure or holding or part thereof or any land, had no power to alienate such estate, tenure, holding, part of land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Revenue-officer shall keep the amount of compensation, or the bonds in which it is to be paid, in deposit with the Collector of the district :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the Person lawfully entitled thereto.

(4) Notwithstanding anything contained in sub-sections (2) and (3), an annuity referred to in clause (3) of section 37 [or sub-section (1*a*) of section 39]'[7] shall be paid to the Commissioner of *Wakfs* in the case of a *wakf* or *wakf-alal-aulad* and to a trustee to be appointed in this behalf by the Provincial Government in any other case.

Note : Section 58 prescribes the manner in which payment of compensation will be made to a person who is entitled to get it. The amount of compensation shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be non-negotiable and payable in not more than forty annual

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7. The words, figures, letter and brackets "or sub-section (1a) of section 39" were inserted after the word and figures "section 37" by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1960 (E. P. Ord. No. XII of 1960), section 8.

instalments and shall carry interest at the rate of three per *centum per annum* with effect from the date of issue.

Sub-section (3) provides that if any person who is entitled to receive compensation in respect of any estate, tenure, or holding or any land, had no power to alienate such estate, tenure, holding or any land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Revenue-officer shall keep the amount of compensation or the bonds in deposit with the Collector of the district. It is also provided that nothing shall affect the liability of any person who may receive the whole or any part of any compensation to pay the same to the person lawfully entitled to receive it. According to this provision a limited owner can make over the whole or any part of the compensation to the person who is legally entitled to receive the same. As for example, if a Hindu widow having a limited interest transfers the compensation to the next reversioner, she will not be held liable for such payment.

Under sub-section (4) the annuity referred to in clause (3) of section 37 or sub-section (1a) of section 39 will be paid to the Administrator of *Wakfs* in the case of *wakf or wakf-alal-aulad* and to a trustee in any other case. Therefore, the proceeds of the *wakf*, whatever form they have now taken, upon the acquisition of *wakf* properties, must be made over to the Administrator of *Wakf*, East Pakistan, who has taken the place of the Commission of *wakfs*.[8]

59. Money or bonds deposited in respect of estates, tenures, holdings or lands belonging to persons incompetent to alienate : (1) If the amount of any compensation paid in bonds or in cash is deposited with the Collector of the district under sub-section (3) of section 58 and it appears to the Collector that the estate, tenure or holding or part thereof or any land in respect of which such amount has been awarded as compensation was held by any person who had no power to alienate the same, the Collector shall, where the amount is deposited in cash, order such amount to be invested in the

8. *Gholam Hossain v. Province of East Pakistan* (1966) 18 D.L.R.52 at 55.

purchase of such Government or other approved securities as the Collector thinks fit and shall direct the payment of the interest of such bonds or interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the interest in such estate, tenure, holding or part thereof or other land, as the case may be, if such interest had not vested in the Provincial Government under section 3 or section 44, and such bonds or securities shall remain so deposited until—

(a) they are made over to any person or persons becoming absolutely entitled thereto; or

(b) they are mature.

(2) If, when such bonds or securities are mature, there is no person or persons absolutely entitled thereto, the Collector shall direct the investment of the proceeds of such bonds of securities in the purchase of such Government or other approved securities as the Collector thinks fit; and the provisions of sub-section (1) shall apply to such investment and to the interest and other proceeds arising from such investment as they apply to the investment made under sub-section (1) of the amount of compensation deposited in cash with the Collector under sub-section (3) of section 58 and the interest and other proceeds arising out of such investment.

(3) In all cases of moneys, bonds and other securities deposited to which this section applies, the Collector of the district shall order the costs of the following matters including therein all reasonable charges and expenses incidental thereto, to be paid by the Provincial Government, namely :—

(a) the cost of such investments as aforesaid;

(b) the cost of the orders for the payment of the interest or other proceeds of securities upon which such moneys are for the time being invested or of such bonds or other securities, and of all proceedings relating thereto except such as may be occasioned by litigation between adverse claimants.

(4) When any annuity is paid as compensation under sub-section (4) of section 58 to the Commissioner of *Wakfs*, the

Commissioner of *wakfs* shall pay the same to the Mutwalli or other person or persons who would for the time being have been entitled to the possession of the *wafks* property in respect of which such compensation has been awarded; and when any amount is paid as compensation under the said sub-section to a trustee appointed in this behalf by the Provincial Government, such trustee shall pay the same to the Shebait or other person or persons who would for the time being have been entitled to the possession of the trust property in respect of whcih such compensation has been awarded; and all costs for the payment of every such annuity under this sub-section shall be paid by the Provincial Government :

Provided that the Commissioner of *Wakfs* or the Trustee may withhold the payment of the whole or any portion of such annuity until he is satisfied that amount of annuity paid in the preceeding year under sub-section (4) of this section has been spent for the purpose for which such amount was paid.

Note : Section 59 refers to compensation payable to persons incompetent to alienate their estates, tenures, holdings or lands. Sub-section (1) provides that when the amount of compensation is deposited with the Collector, he shall invest them in the purchase of Government or other approved securities and allow the interest or other proceeds arising from such investment to the person who is entitled to receive it. The bonds and securities shall remain so deposited with the Collector until they are made over to the person entitled or until they are mature. If there is no person to receive the bonds or securities after maturity, the Collector, under sub-section (2), is to invest them in the purchase of Government or other approved securities; and the interest or other proceeds arising from them will be paid to the person entitled to it. Under sub-section (3) the Government is to bear the cost of investment and payment of interest of securities.

We have seen above[9] that the annuity will be paid to the Administrator of *Wakfs* and to the trustee as the case may be. Under sub-section (4) the Administrator of *Wakfs* will pay the

9. Sec. 58(4).

same to the *mutwalli* and the trustee will pay to the *shebait*. The Government is to bear the cost for the payment of such annuity. The Administrator of *Wakfs* or the trustee may withhold the payment of the whole or any portion of the annuity until he is satisfied that the amount of annuity paid in the preceding year has been spent for the purpose for which it was paid.

60. Dispute as to title or apportionment : If any dispute arises as to the title of any person to receive any compensation payable under a Compensation Assessment-roll or as to the apportionment of any such compensation or any part thereof, the Revenue-officer may refer such dispute to the Special Judge appointed under sub-section (4) of section 48 to enquire into such disputes for decision.

60A.[10] Certain sections not applicable to future acquisition : The provisions of clause (c) of sub-section (4) of section 3, clause (7) of section 44 and sections 61 to 68 shall not apply in the case of acquisition of rent-receiving interests on or after the date of coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956.

Note : Section 60A was added by the East Bengal Ordinance No.III of 1956. The insertion of this section has the effect of restoration of ordinary legal position between a rent-receiver to whom arrears of rent were due, and the rent payer.[11] In the absence of attachment under decree for arrears of rent, the rent-receiver cannot possess any special interest in the land.[12] The Government undertakes no duty to pay the creditor any part of his dues, but leaves him to his ordinary remedies at law.[13]

10. Section 60A was added by the E. B. State, Acquisition and Tenancy (Amendment) Ord, 1956 (E. B. Ordinance No.III of 1956), section 14.
11. *Ali Haider v. Province of East Pakistan* (1957) 10 D.L.R (S.C) 80.
12. *Ibid.*
13. *Ibid.*

CHAPTER–IX

Provisions relating to arrears of revenue, rent and cesses.

61. Definition of arrears : For the purpose of clause (c) of sub-section (4) of section 3 or clause (7) of section 44, the expression "arrears" shall include the arrears in respect of which suits were pending on the date or day, as the case may be, referred to in the said clauses or in respect of which decrees, whether having the effect of a rent-decree or money-decree, were obtained before the said date or day and have not been satisfied and are not barred by limitation and shall also include the costs allowed by such decrees.

62. Payment and realisation of arrears : (1) All arrears of rent and all cesses and interest, which have vested in the Provincial Government under clause *(c)* of sub-section (4) of section 3 or under clause (7) of section 44, shall be payable to the Provincial Government and not to anybody else; and no payment made in contravention of this sub-section shall be valid.

(2) Subject to the provisions of sections 63, 64 and 65, all such arrears of rent and cesses and interest and all arrears of revenue and all cesses and interest referred to in clause (b) of sub-section (4) of section 3 or in clause (5) of section 44 [may, without prejudice to any other mode of recovery,][1] be recoverable by the Revenue-officer under the provisions of the Bengal Public Demands Recovery Act, 1913.

63. Provision regarding pending suits and proceedings : If [any suit by a rent-receiver or rent-receivers][2] for the recovery of any arrears which have vested in the Provincial Government under clause *(c)* of sub-section (4) of section 3 or under clause (7) of section 44 or any proceeding in execution of a decree for the recovery of any such arrears is pending before any Civil Court on the date or day, as the case may be, referred to in the said clauses, such suit or proceeding, [where such rent-receiver was the sole landlord or such rent-receivers constituted the entire body of co-sharer landlords,][3] shall not be further proceeded with and shall be deemed to have been withdrawn, and any such decree may be executed as if it were a certificate filed under the Bengal Public Demands Recovery Act, 1913.

64.[4] Realisation of arrears in respect of lands held by tenants under Government : (1) A certificate or decree for the recovery of any arrears of rent to the recovery of which the provisions of this Chapter apply shall not, in the case where the certificate or judgement-debtor is a tenant under the Provincial Government and where the arrears covered by such certificate or decree relate to any [holding or land][5] held by such tenant, be executed by arresting the certificate or judgement-debtor and detaining him in the Civil prison or by the attachment and sale of any movable or immovable property other than the [holding or land][5] to which such arrears relate.

(2)[6] If the holding or land to which such arrears relate has, before the execution of such certificate or decree, been sold in execution of any other decree or certificate, such arrears shall, notwithstanding anything contained in any other law for the time being in force, be a charge on such holding or land.

65. Sale of lands held by tenants under Government for arrears : Where any certificate or decree is executed under this Chapter by the attachment and sale of any land which is held

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1. These words and commas were substituted for the word "shall" by the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E.B. Act. VI of 1952), section 18.
2. These words were substituted for the words "any suit or proceedings" by section 19, *ibid.*
3. These words and commas and the comma preceding them were inserted by section 19 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952).
4. The original section 64 was numbered as sub-section (1) of the same section by section 20 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act. VI of 1952).
5. These words were substituted for the word "land" by section 20, *ibid.*
6. Sub-section (2) was added by section 20, *ibid.*

by the certificate or judgement-debtor as a tenant under the Provincial Government, such sale shall, [in arears where Part V applies,][7] be subject to the provisions of section 90.

66. Power to grant instalments and stay execution : It shall be competent for the Certificate Officer in executing any certificate or decree under this Chapter to order the payment of the amount of such certificate or decree to be made by the certificate or judgement-debtor by instalments within a period not exceeding three years from the date of such order and to stay the execution of the certificate or decree for such period :

Provided that in default of payment of any instalment, the certificate or decree may be executed for the whole of the outstanding balance thereof.

67. Payment to outgoing rent-receivers : (1) The Provincial Government shall pay to an outgoing rent-receiver to whom any arrears of rent and cesses and interest which have vested in the Provincial Government under clause (c) of sub-section (4) of section 3 or under clause (7) of section 44 were due immediately before the date or day, as the case may be, referred to in the said clauses a sum equivalent to fifty *per centum* of [such arrears excluding interest].[8] as computed in the manner prescribed, by way of compensation within a period not exceeding four years from the said date or day in such manner and in such instalments as may be prescribed:

Provided[9] that before making such payment, the Provincial Government may, after giving the outgoing rent-receiver an opportunity of being heard, deduct from such sum any debts and dues payable to Government by such rent-receiver.

7. These words, figure and comma, and the comma preceding them were inserted by section 21, *ibid*.
8. These words were substituted for the words "such arrears and interest" by section 22 of the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952).
9. This proviso was added, after substituting a colon for the full-stop at the end of section 67, by section 22, *ibid*.

(2)[10] Instead of proceeding under sub-section (1), the Provincial Government may pay, at such time and in such manner as may be prescribed, to an outgoing rent-receiver, in lieu of the compensation payable under that sub-section, a sum equivalent to seventy *per centum* of the total amount actually collected by the Provincial Govrnment out of such arrears and the provision of the proviso to sub-section (1) shall apply also to such payment.

(3)[10] The amount payable under sub-section (2) shall be deposited by the Collector in the prescribed manner with the Munsiff having jurisdiction and the Munsiff shall thereupon publish the particulars of the person to whom the amount is stated by the Collector to be due and invite claims from the co-sharers and superior landlords of such person, if any, against such amount and shall then make an award and disburse the amount amongst the persons who are found by him to have a valid claim.

68. Computation of the period of limitation : Notwithstanding anything contained in any other law for the time being in force, in computing the period of limitation for the recovery under this Chapter of any arrears which have vested in the Provincial Government under clause (c) of sub-section (4) of section 3 or under clause (7) of section 44, a period of [ten years][11] on and from the date or day, as the case may be, on which such arrears have so vested under the said clauses and, where a suit or proceeding referred to in section 63 filed for the recovery of any such arrears was pending before any Civil Court, also the period for which such suit or proceeding was so pending, shall be excluded.

10. Section 67 was renumbered as sub-section (1) of that section and thereafter new sub-sections (2) and (3) were inserted by the E. B. State Acquisition and Tenancy (Second amendment) Ordinance, 1961 (E. P. Ordinance No. XIV of 1961), section 6.
11. These words were substituted for the words "twenty four months" by section 7 of the E. B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1961 (E. P. Ordinance No.XIV of 1961).

CHAPTER –IXA.[1]

Special provisions relating to arrears of rent

68A. Application of this Chapter : The provisions of this Chapter shall apply in the cases of acquisition of rent-receiving interests on or after the date of coming into force of the East Bengal States Acquisition and Tenancy (Amendment) Ordinance, 1956.

68B. Transitory provisions in respect of pending cases before the Certificate Officer : (1) All requisitions for recovery of arrears of rent and applications for execution of decrees for arrears of rent made by a rent-receiver under the provisions of Chapter IXA for which this Chapter is being substituted and pending before any Certificates Officer on the date of coming into force of the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1957, shall, on such coming into force, stand transferred to the Civil Court which has jurisdiction to entertain a suit for the recovery of the arrears of rent to which such requisition or application relates.

(2) On such transfer, the requisition or the application shall be deemed to be a plaint or application for execution of a decree, as the case may be, within the meaning of the Code of Civil Procedure, 1908, and the suit or application shall proceed in accordance with the provisions of law for the time being in force applicable for the recovery of such arrears or for the execution of such decree :

Provided that the Civil Court to which such requisition or application stands transferred shall, before proceeding with the suit or execution case, realise the difference between the court-fees already paid before the Certificate Officer on such requisition or application and the court-fees payable on such plaint or application in the Civil Court.

1. Chapter IXA (containing section 68A, 68B, 68C, 68D and 68E was substituted for the former Chapter IXA by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E. P. Ord. No. XLIV of 1958), section 20.

68C. Arrears of rent and cesses due to a rent-receiver and decrees for such arrears : All arrears of rent and cesses together with interest thereon, which remained due to any rent-receiver in respect of any interest on the date of acquisition of such interest under the provisions of this Act and which have not been barred by limitation, and all sums due to him in respect of any decree for such arrears whether having the effect of a rent-decree or money-decree and whether obtained before or after the date of acquisition, the execution of which is not barred by limitation, shall continue to be recoverable by such rent-receiver amicably or through Civil Court from the persons liable to pay them.

68D.[2] Option to have arrears collected through Provincial Government on certain conditions : (1) Any such rent-receiver may apply to the Collector that he desires to have such arrears and interest, which are not barred by limitation, to be recovered by the Provincial Government in consideration of half the amount actually collected being paid to the Provincial Government.

(2) The Collector may refuse such application for reasons to be recorded in writing.

(3) If the Collector grants the application, it shall be competent for the Provincial Government to recover such arrears and interest as if they were public demands or in any other manner as if the Provincial Government were the rent-receiver.

(4) The Collector shall, from time to time, in accordance with such rules as may be prescribed, send to the rent-receiver accounts of the amounts of arrears and interest aforementioned actually collected and shall pay to the rent-receiver half of the amount so collected and retain the other half for the Provincial Government. Such accounts shall be treated as conclusive and shall not be questioned in any manner.

2. Section 68D was substituted for the former section 68D by the East Bengal State Acquisition and Tenancy (Fourth Amendment) Ordinance, 1959 (E. P. Ord. No. LX of 1959), section 2.

(5) The Provincial Government shall not be liable if it fails to recover the whole or any portion of such arrears and interest.

68E.[3] **Computation of the period of limitation :** Notwithstanding anything contained in any other law for the time being in force, in computing the period of limitation for the recovery of any such arrears or for the execution of any decree in respect of such arrears, a period of [forty-eight months][4] on and from the date of acquisition under this Act of the rent-receiving interests to which such arrears relate shall be excluded.

3. See foot-note 1 on p.172, *ante*.
4. The words within square brackets were substituted for the words "Twenty-four months" by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1959 (E. P. Ord. No. LII of 1959), section 2. This substitution shall be deemed to have taken effect on the 14th day of April, 1958.

CHAPTER –X

Provisions relating to indebted rent-receivers.

[The object of Chapter X is to give relief to the indebted rent-receivers.[1] The Act has been enacted to provide *inter alia* for the acquisition, by the State of the interest of rent-receivers. As a consequence of such acquisition, the rent-receivers may have to face many difficulties in the matter of payment or satisfaction of their debts to third parties. The legislature seems to have kept in view that possible contingency and have accordingly made suitable provisions in this Chapter so that the hardship caused by such acquisition may be minimised as far as possible consistent with the claim of the creditor and the means of the debtor whose rent-receiving interests are acquired.[2]

This Chapter contains three sections. Section 69 bars the execution of certain decrees and orders for the recovery of certain debts of an indebted rent-receiver for certain time. Section 70 provides the manner of scaling down of debts and recovery thereof. Section 71 empowers the Provincial Government to authorise any Revenue-officer to take action for the purpose of scaling down of debts of a rent-receiver.]

69. Bar to execution of certain decrees and orders for the recovery of certain debt of rent-receivers : (1) After the commencement of this Act, no Civil Court shall entertain any suit or execute any decree or order against any property of any rent-receiver, for the recovery of any debt which is liable to be scaled down under section 70, until all the interests of such rent-receiver which are liable to be acquired under this Act have been so acquired and compensation in respect of the acquisition of all such interests have been paid or deposited under section 58 :

1. *Manmatha v. Tripura State Bank* (1957) 11 D.L.R. 204 at 208.
2. *Aryasthan Insurance Co. v. Nurul Islam* (1958) 10 D.L.R. 510.

Provide[3] that if any rent-receiver fails to apply for the scaling down of his debts within the period mentioned in sub-section (1) of section 70, the provision of this sub-section shall cease to apply to his debts on the expiry of the said period.

(2) Notwithstanding anything contained in any other law for the time being in force, in calculating the period of limitation applicable to a suit or an application for the execution of a decree or order, the time during which the institution of such suit or the execution of such decree or order is barred under sub-section (1) shall be excluded.

(3) The amount of any debt recoverable under any decree or order the execution of which is barred under sub-section (1) shall be deemed to be reduced, if any such debt has been scaled down under section 70, by the amount by which such debt has been so scaled down.

Note : Section 69 is to be read along with section 70 of the Act. The object of the two sections is to provide relief to the indebted rent-receivers.[4] Section 69 provides for stay of all proceedings in respect of debts of a rent-receiver which are liable to be scaled down under section 70. Section 70 declares not only the debts which are liable to be scaled down but also the mode of scaling down of debts.[5] Section 69 lays down three requisites.[6] Firstly, the section would have application in suits brought after the commencement of the Act; secondly, it would apply in the case of a rent-receiver, and for debts which are liable to be scaled down under section 70 of the Act; and thirdly, no Civil Court would entertain a suit or execute a decree or order if it was brought to the notice of that Court that the debtor was a rent-receiver, and his debts were liable to be scaled down.

3. This proviso was added, after substituting a colon for the full-stop at the end of sub-section (1) of section 69 by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance No. III of 1956), section 16.
4. *Manmatha v. Tripura State Bank* (1959) 11 D.L.R. 204 at 208.
5. *Birendra v. Naresh* (1954) 7 D.L.R. 339.
6. *Manmatha v. Tripura State Bank* (1959) 11 D.L.R. 204 at 208.

Sub-Section (1) of section 69 provides that after the commencement of this Act, no Civil Court shall entertain any suit or execute any decree or order for the recovery of any debt which is liable to be scaled down under section 70. So the question as to whether an execution case should be stayed or not must depend upon the fact as to whether the debt is liable to be scaled down under that section.[7] Section 70 is not expressed as an exhaustive statement of debts subject to such a liability.[8] While discussing the scope of section 69, Amin Ahmed, C. J. and Chakraborty, J. observed in the case of *Manmatha v. Tripura State Bank*[9] that this section not only bars the entertainment of the suit after the commencement of the Act, but also provides that the Court shall not execute any decree which might have been passed before the commencement of the Act.

The expressions "after the commencement of this Act" and "until" occurring in sub-section (1) prescribe the maximum period during which a rent-receiver can have the benefit of this section and *status quo* has to be maintained.[10] The beneficial period starts from the date of the commencement of this Act and terminates when all the interests of a rent-receiver have been acquired and compensation in respect thereof has been paid or deposited and not from the date of the acquisition of rent-receiving interest of the debtor.[11] Similar view was also expressed by their Lordships of the Supreme Court of Pakistan in the case of *United Bank of India v. Mohan Bashi*[12] in these terms : "It is evident from the wording of section 69 and section 70 that the period during which proceedings of the specified kinds shall not be entertained is the period which commences with the acquisition of the rent-receiving interest of the debtor in

7. *Aryasthan Insurance Co. v. Nurul Islam* (1958) 10 D.L.R. 510.
8. *United Industrial Bank v. Mohan Bashi* (1959) 11 D.L.R. (S.C.) 936.
9. (1959) 11 D.L.R. 204 at 208.
10. *Birendra v. Naresh* (1954) 7 D.L.R. 339.
11. *Mafazal Ahmed v. Abdus Sattar* (1963) 16 D.L.R. 92; *Habibur Rahman v. Sankar Bank* (1964) 16 D.L.R. 567; *Birendra v. Naresh* (1954) 7 D.L.R. 339; *Radhika v. Shyama* (1954) 6 D.L.R.531.
12. (1959) 11 D.L.R. (S.C.) 369.

question and ends with the payment to him of compensation."

It is true that when the rent-receiving interest is acquired, the rent-receiver may apply for protection under section 69 of the Act. But the protection given under this section may be intercepted when the compensation rolls in respect of the interests of the rent-receiver have been fully published and the rent-receiver has not applied for scaling down his debts in respect of his estate within three months from the date of the publication of the compensation roll under section 42 of the Act.[13]

For the purpose of applicability of this section, the Courts are not concerned with whether the property has been acquired or not. It will simply consider whether it is acquirable or not. If it is acquirable under Chapter II or under Chapter V of the Act, this section comes into play and any suit or execution of decree is to be stayed till such time as mentioned in the section.[14]

For finding out whether the suit is of the nature as described in section 69 of the Act, the Court should start with an initial jurisdiction but as soon as it finds that the suit is of such a nature, it has no further jurisdiction to entertain the same and must return the plaint.[15] To keep the suit on the file of the Court and to pass orders staying further proceedings in the suit will amount to entertaining or receiving the suit which is prohibited by this section.[16]

What is contemplated by "which are liable to be acquired" in section 69 is not only the rent-receiving interests but also the interests of the rent-receiver including his *khas* land.[17] There is a difference between rent-receiving interests and interests of the rent-receiver like the difference between

13. *Habibur Rahman v. Sankar Bank* (1964) 16 D.L.R. 367; *Shankar Bank v. Sultan Bhuiya* (1968) 20 D.L.R. 63.
14. *Mafazal v. Abdus Sattar* (1963) 16 D.L.R. 92.
15. *Atul v. Tripura Modern Bank* (1957) 9 D.L.R. 495 at 496; *Manmatha V. Tripura State Bank* (1959) 11 D. L. R. 204.
16. *Atul v. Tripura Modern Bank* (1957) 9 D.L.R. 495 at 496.
17. *Mafazal v. Abdus Sattar* (1963) 16 D.L.R. 92.

water-tap and tap-water. A man may create a mortgage or charge on his rent-receiving interests or his other property on which he is in *khas* possession or on both. Because he is a rent-receiver, his debt, in either case will be the debt of the rent-receiver.[18] It may be unsecured debt such as simple money debt or pawn of movable property, still it will be a debt of a rent-receiver and realisation of such debt by sale of his property is barred under this section, if his debt is liable to be scaled down under section 70. If a rent-receiver has got any debt liable to be scaled down under section 70, none of his property, whether rent-receiving interest or interest of the rent-receiver, can be proceeded with till all his acquirable property has been acquired and compensation for it is paid.[19]

Section 69 most emphatically prohibits the Civil Court from entertaining any suit or from executing any decree against the property of any rent-receiver and therefore whether a party raises any objection under section 69 or not, it is the duty of the Court to refuse to execute a decree against a rent-receiver as soon as this fact is brought to the notice of the Court.[20] The failure of the judgement-debtor to raise the objection under this section in his petition which he filed earlier cannot operate as a bar to the Court's giving effect to these provisions when its attention is drawn subsequently.[21]

The object of the statute being to benefit the public, and the statute being based on public policy, there cannot be any question of any waiver or consent or estoppel on the part of the judgement-debtor.[22] When the public policy requires the observance of the provision it cannot be waived by any individual[23] as there cannot be any estoppel against a statute.[24]

18. *Ibid.*
19. *Mafazal v. Abdus Sattar* (1963) 16 D.L.R. 92.
20. *Dhirendra v. Sudhindra* (1959) 11 D. L.R. 151; *Jnanendra v. Dhirendra* (1956) 8 D.L.R. 170; *United Bank v. Krishna Pada Pal* (1956) 7 P.L.R. (Dhaka) 106.
21. *Jnanendra v. Dhirendra* (1956) 8 D.L.R. 170.
22. *Dhirendra v. Sudhindra* (1959) 8 D.L.R.151.
23. *Ibid.*
24. *Jnanendra v. Dhirendra* (1956) 8 D.L.R.170.

The argument that when a person who has properties in respect of which he is a rent-receiver and other properties in respect of which he is not, the decree in respect of a debt incurred before the 7th day of April, 1948 can be executed against him by attachment of properties in respect of which he is not a rent-receiver, is opposed to the scheme of section 69 of the Act and is not tenable at all.[25] There is sufficient indication in clause *(b)* of sub-section (1) of section 70 that section 69 is applicable to a rent-receiver who has properties other than those liable to be acquired under the Act.[26]

In the case of *Mahaluxmi v. Md. Saheb Meah*,[27] it was held that a bank being a rent-receiver can get a stay order of the execution of the decree by the depositor for money deposited in the bank. A deposit in bank creates relationship between a debtor and a creditor and so, when a depositor sues a bank on his deposit and gets a decree therefor, the decretal amount is a debt and, as such, it comes within the purview of sections 69 and 70 of the Act and therefore, the judgement-debtor being a rent-receiver, is entitled to an order staying the execution of the decree under sections 69 and 70 of the Act.[28]

Under section 69 (1) read with section 70 (1) of the Act, no decree for debt incurred by a rent-receiver prior to the 7th April, 1948, can be executed by a Civil Court.[29] Where a mortgage debt was incurred by a rent-receiver prior to that date, but a decree for principal and interest as well as for costs was passed after that date, it was held[30] by Amin Ahmed, C. J. that the decree for principal and interest comes within the terms of section 69 (1) read with section 70 (1) and cannot be executed, but the decree for costs is not one for debt within the meaning of section 70(1) and does not come within the meaning of section 69(1); and the execution thereof cannot be

25. *Kazi Abdul Hamid v. Kashi Charan* (1954) 7 D.L.R.115.
26. *Kazi Abdul Hamid v. Kashi Charan* (154) 7 D.L.R.115.
27. (1957) 9 D.L.R. 133.
28. *Mahaluxmi v. Md. Saheb Meah* (1957) 9 D.L.R.133.
29. *United Bank v. Krishna Pada Pal* (1956) 7 P.L.R.(Dacca) 106.
30. *Ibid : Md. Jahiruddin v. Shoarma Bibi* (1960) 12 D.L.R.139; *United Bank v. Mahabubur Rahman* (1965) 17 D.L.R.177.

stayed. Similar view was also reiterated by Hasan, J. in the case of *United Bank of India v. Mahbubur Rahman*.[31]

The question of entertainment of the suit in certain contingencies is a question of procedure, and section 69 of the Act was enacted by the legislature to regulate the procedure.[32] It may be that the debtors might acquire some rights incidentally on account of the law enjoined to regulate that procedure, but the main question is how, and in what circumstances the Court will entertain the suit and dispose of it. This is evidently a question of procedure.[33] The amendment of section 70 in 1956 by which "loan advanced for financing tea industry" was exempted from being scaled down and to which, therefore, the provisions of section 69 will not be applicable, will operate prospectively.[34] Changes in the law of procedure affect pending suits prospectively unless the legislature indicates otherwise, either expressly or impliedly.[35]

An order staying or refusing to stay execution proceedings under this section is an order which comes under section 47 of the Civil Procedure Code and as such appealable.[36]

Sub-section (2) of section 69 provides that the period during which the institution of the suit or execution of decree or order remains stayed on account of the provisions of sub-section (1) of the same section, shall be excluded in computing the period of limitation. This sub-section was designed to give protection to the decree holders.[37]

Sub-section (3) contemplates that when a debt has been actually scaled down under section 70, that amount which has been scaled down will be deemed to have reduced the amount of debts of a rent-receiver. So if any amount has not been

31. (1965) 15 P.L.R. (Dacca) 876.
32. *Manmatha v. Tripura State Bank* (1959) 11 D.L.R.204.
33. *Manmatha v. Tripura State Bank* (1959) 11 D.L.R.204.
34. *Ibid*
35. *Ibid.*
36. *Mahaluxmi Bank v. Md. Saheb Meah* (1957) 9 D.L.R. 133; *Radhika v. Shyama* (1954) 6 D.L.R.531; *Noakhali Loan Officer v. Nanigopal* (1964) 5 P.L.R. (Dacca) 267.
37. *Kazi Abdul Hamid v. Kashi* (1954) 7 D.L.R. 115; *Birendra v. Naresh* (1954) 7 D.L.R. 339.

scaled down, it will be open to the decree-holder to proceed against the judgement-debtor in respect of that portion of the debts and so far as the law of limitation is concerned, even after the process of scaling down is over the decree holder is protected by the provisions of sub-section (2).[38]

70. Scaling down of debts and recovery thereof : (1) After the interests of a rent-receiver in a district, part of a district or local area have been acquired under this Act, the debts incurred by such rent-receiver before the 7th day of April, 1948, other than arrears of revenue, rent or cesses and other than debts and dues payable to the Provincial or Central Government or to a Co-operative Society [and also other than loans advanced for financing tea industry],[39] shall, notwithstanding anything contained in any other law for the time being in force, be scaled down in the following manner, if the rent-receiver has applied in the prescribed manner for scaling down his debts to the Revenue-officer authorised under sub-section (1) of section 71 within 3 months of the publication under section 42 of the Compensation Assessment-roll in respect to his interests or lands which have been acquired first under section 3 or section 44 :—

(a) in the case of a debt secured by a mortgage or charge on the interests of a rent-receiver which have been acquired under the provisions of this Act, the debt shall be scaled down proportionately to the reduction in the net income suffered by such a rent-receiver as a result of the acquisition of the interests concerned;

(b) in the case of a debt secured by a mortgage or charge partly on the interests of a rent-receiver which have been acquired under this Act and partly on other properties which have not been so acquired under this Act, the debt shall be divided into two parts in the same ratio as the net annual income of the rent-receiver, as calculated in the manner prescribed, from the interests mortgaged or charged which have been acquired bears to the net annual income from the properties mortgaged or charged which have not been so acquired; and the part of the debt proportionate to the net annual income from the interests which have been acquired shall be scaled down proportionately to the reduction of the net annual income suffered by the rent-receiver as a result of the acquisition of the interests concerned;

(c) in the case of a debt not secured by any mortgage or charge on any interest or property, whether immovable or movable, of the rent-receiver, the debt shall be divided into two parts in the same ratio as the net annual income of the rent-receiver, calculated in the manner prescribed, from the interests, which have been acquired under this Act, bears to the net annual income of the rent-receiver from the properties which have not been so acquired and from other sources; and the part of the debt proportionate to the net annual income from the interests which have been acquired shall be scaled down proportionately to the reduction in the net annual income suffered by the rent-receiver as a result of the acquisition of the interests concerned;

Provided that no portion of the debt of any rent-receiver shall be scaled down if the total of the debts apportioned under clauses *(a)*, *(b)* and *(c)* on the interests or lands of the rent-receiver acquired under this Act be less than one-fourth of the total amount of the compensation money payable under this Act to such rent-receiver :

Provided further that the debts liable to be scaled down under this section shall not be scaled down to an amount less than one-fourth of the total amount of such compensation money.

(1*a*)[40] Notwithstanding anything contained in sub-section (1), a rent-receiver, in respect of whose interest the

38. *Ibid.*

39. These words were inserted by the E.B. State Acquisition and Tenancy (Amendment) Act, 1956 (E.P. Act IV of 1956), section 2.

40. Sub-section (1a) was added by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 17.

Compensation Assessment-roll has been published under section 42 on or before the 15th day of March, 1955, may apply in the manner and to the officer laid down in that sub-section for scaling down his debts referred to therein within three months from the coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956.

(1*b*)[41] Notwithstanding anything contained in sub-section (1) or (1*a*), a rent-receiver whose properties were under the management of the Court of Wards under the Court of Wards Act, 1879 and in respect of whose interest the Compensation Assessment-roll has been published under section 42 before the date of coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1959, may apply in the manner and to the officer as laid down in sub-section (1) for scaling down his debts referred to therein within 3 months from the said date.

(2) If any rent-receiver holds lands and other immovable properties including those which will not be acquired under this Act, in different areas, then, notwithstanding anything contained in this section, action shall not be taken for the scaling down of the debts under this section until a Compensation Assessment-roll or Compensation Assessment-rolls in respect of all such areas has or have been prepared under [this Act][42] and finally modified under section 54.

(3) The extent of reduction in the net income of a rent-receiver referred to in clauses *(a)*, *(b)* and *(c)* of sub-section (1) shall be determined in accordance with the rules made in this behalf by the Provincial Government.

(4) The net annual income referred to in clauses (b) and (c) of sub-section (1) from the properties which have not been acquired under this Act and the income from other sources

41. Sub-section (1b) was inserted by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1959 (E. B. Ord.No.IV of 1959), section 4.

42. These words were substituted for the word and figure "chapter V" by the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952), section 23.

shall be calculated in accordance with the rules made in this behalf by the Provincial Government.

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract, —

(a) no creditor shall be entitled to recover in respect of any debt referred to in clause *(a)* of sub-section (1) any sum in excess of the debt as scaled down under that sub-section; and the liability of the rent-receiver for the balance of the debt shall be extinguished;

(b) no creditor shall be entitled to recover from the rent-receiver, in respect of the part of any debt which has been apportioned under clauses *(b)* and *(c)* of sub-section (1) to the interests of the rent-receiver which have been acquired under this Act, any sum in excess of the amount to which such part of the debt has been scaled down under clauses *(b)* and *(c)* of sub-section (1), and the liability of the rent-receiver for the balance of such part of the debt shall be extinguished;

Provided that the aggregate of all debts of a rent-receiver so reduced under clauses *(a)*, *(b)* and *(c)* of sub-section (1) shall be recoverable only from the compensation money payable for the acquisition of all his interests under this Act, and shall be limited to and shall not exceed half of the total compensation money so payable :

Provided further that no portion of the debt of a rent-receiver apportioned under clause *(b)* or *(c)* of sub-section (1) on his properties which have not been acquired, and no portion of his debt secured entirely by a mortgage or charge on such properties, shall be recoverable from any compensation money payable to such rent-receiver under this Act; and

(c) subject to the first proviso to clause *(b)*, in the matter of recovery of debts from compensation money, the debts secured by the mortgage or charge on the interests of the rent-receiver in any land or other immovable property shall have preference in the sequence in which such mortgage or charge was created over the debts not so secured; and any amount

available after payment of the debts so secured shall be rateably distributed for payment of the debts not so secured.

Explanation :[43]—For the purpose of this section, the lands retained by a rent-receiver under the provisions of section 20 shall be deemed as not acquired under the Act.

Note : Section 70 deals with scaling down of debts and its recovery. The scaling down of debts would be made by the Revenue-Officer at the instance of the rent-receiver.[44]

Sub-section (1) of this section, in the first instance, specifies debts which are not liable to be scaled down; these are arrears of revenue rent or cesses, debts and dues payable to the Central or Provincial Government or to a Co-operative Society, and by a later amendment of 1956, "loans advanced for financing tea industry." This sub-section then proceeds to state that, with the exception of these debts, the debts incurred by the rent-receiver before the 7th April, 1948, whose rent-receiving interests have been acquired under the Act shall be scaled down in the manner indicated in clauses *(a)*, *(b)* and *(c)*, provided an application is made for that purpose to the Revenue-officer in the prescribed form within the required time. The words "liable to be scaled down" in this section clearly indicate the nature of debts in respect of which the benefit under section 69 can be claimed and these are such debts as are not excepted by section 70 of the Act.[45]

There are three categories of debts specifically mentioned in clauses *(a)*, *(b)* and *(c)* of section 70 (1) which are liable to be scaled down. They are *(a)* debts incurred wholly upon the interests of the rent-receiver (not only on rent-receiving interest) which have been acquired, *(b)* debts secured partly on the interests of the rent-receiver which have been acquired, and partly on other properties which have not been acquired, and *(c)* unsecured debt of a rent-receiver who has got property liable to be acquired as well as property not liable to be

43. This Explanation was added by the E. B. State Acquisition and Tenancy (Amendment) Act, 1956 (E. P. Act IV of 1956) section 2.
44. *Manmatha v. Tripura State Bank* (1957) 11 D.L.R.204.
45. *Birendra v. Naresh* (1954) 7 D.L.R. 339.

acquired.[46] Each clause states, with exactness, the formula to be applied in scaling down the debts to which it applies, and these formulas differ from each other. There is no general formula provided or indicated, to which these three special formulas could be regarded as exceptions.[47] The three cases specified in the three clauses are clearly special cases and do not constitute exceptions to any general rules.[48]

The debts on mortgages secured wholly upon properties which are not liable to acquisition under the Act have been omitted from sub-section (1) of section 70, and they are not liable to be scaled down.[49] The argument that all cases of debts other than excepted debts are intended by the legislature to be dealt with under sub-section (1) of section 70 despite the fact that the precise mode of scaling down has been prescribed in respect of only three specified categories of debts, has not been accepted by the Court inasmuch as it cannot assume the function of the legislature and lay down a formula applicable to cases of this nature out of its own mind.[50] The purpose of the legislature in relation to debts secured upon properties not liable to be acquired is that these debts are applicable to and are recoverable in full from the properties upon which they are secured.[51] In this view such debt is not one which is liable to be scaled down under this section and consequently, the bar of section 69 is not applicable to it.[52]

Regarding the mode of scaling down of debts, clause *(a)* of sub-section (1) provides that the debts secured wholly upon the interests of the rent-receiver which have been acquired shall be scaled down in proportion to the reduction in the net income suffered by the rent-receiver as a result of the

46. *Mafazal Ahmed v. Abdus Sattar* (1963) 16 D.L.R. 92; *United Industrial Bank v. Mohan Bashi* (1959) 11 D.L.R.(S.C.) 369 ; *Aryasthan Insurance Co. v. Nurul Islam* (1958) 10 D.L.R. 510.
47. *United Industrial Bank v. Mohan Bashi* (1959) 11 D.L.R. (S.C) 369.
48. Ibid.
49. *United Industrial Bank v. Mohan Bashi* (1959) 11 D. L. R. (S.C.) 369.
50. Ibid
51. Ibid.
52. Ibid.

acquisition of his interests. Clause *(b)* provides that the debts secured partly on the interests of the rent-receiver which have been acquired and partly on other properties which have not been so acquired, shall be divided proportionately into two parts on the basis of the net income of the two properties. That portion of the debt incurred on the property which have been acquired shall be scaled down in proportion to the reduction of the net annual income suffered by the rent-receiver. Clause *(c)* speaks of unsecured debts of a rent-receiver. It provides that such debt shall be divided in two parts in the same ratio as the net annual income from the interests which have been acquired bears to the net annual income from the properties which have not been so acquired. The former part of the debt shall be scaled down in proportion to the reduction in the net annual income suffered by the rent-receiver as a result of the acquisition of the interests.

In order to scale down the debts of a rent-receiver it is necessary first of all to ascertain the net income of the property and then the extent of reduction in the net income of the rent-receiver. Rule 74 gives us the clue to calculate the net income and Rule 75 indicates the manner of determination of the extent of reduction in net income, Rule 74 states as follows :—

"74. For the purpose of sub-section (1) of section 70, —

(a) the net annual income from the interests in lands acquired under the Act, other than *khas* cultivable waste lands not bearing any profit and *khas* lands covered by buildings, shall be the net annual income or profit or annual letting value, as the case may be, determined in respect of such interests in the Compensation Assessment-roll under the provisions of the Act;

(b) the net annual income from *khas* lands not acquired under the Act, other than *khas* cultivable waste lands not bearing any profit, vacant non-agricultural lands and lands covered by buildings, shall be calculated in the manner laid down in sub-section (3) of section 39 and rule 53;

(c) the net annual income from *khas* cultivable waste lands not bearing any profit, whether acquired under the Act or not, shall be calculated at such amount, not exceeding rupees three per acre, as the Revenue-officer may think reasonable;

(d) the net annual income from any *khas* vacant non-agricultural land not acquired under the Act shall be calculated at its annual letting value determined in the manner laid down in sub-rule (1) of rule 55, less the amounts of rent, cesses and taxes payable in respect thereof;

(e) the net annual income from a building and the land covered by it, whether acquired under the Act or not, shall be calculated at their annual letting value or, if they are not let out at the annual rent which they would, in the opinion of the Revenue-officer, fetch, if let out, less the amounts payable as revenue or rent, cesses and taxes in respect thereof and the cost of collection of rent, if any, for the lessee;

(f) the net annual income from properties not acquired under the Act, other than interests from lands or buildings, and the net annual income from other sources shall be calculated by the Revenue-officer at such amount as he considers reasonable after considering the statements filed by the indebted rent receiver under rule 73 and also by his creditors, if any, and making such other enquiries, if any, as he thinks fit and also after giving the indebted rentreceiver and his creditors an opportunity of being heard."

Rule 75 runs thus :—

"75 (1) For the purpose of determining under sub-section (3) of section 70, the extent of reduction in the net annual income from any interest suffered by a rent-receiver as a result of the acquisition of such interest under the Act, the Revenue-officer shall first determine the net annual income from such interest according to the provisions of rule 74 and then find out the amount of compensation assessed for such interest in the Compensation Assessment-roll.

"(2) The difference between the amount of the net annual Income determined for such interest under sub-rule (1) and an amount calculated at three *per centum* of the amount of compensation assessed for such interest in the Compensation Assessment-roll shall be deemed to be the extent of reduction in the net annual income from such interest suffered by the rent-receiver as a result of the acquisition of such interest under the Act."

Under the proviso to section 70 (1) no portion of the debt shall be scaled down if the total debt is less than one-fourth of the total amount of the compensation money payable to the rent-receiver. It is also declared that the debts liable to be scaled down shall not be scaled down to an amount less than one-fourth of the total amount of such compensation money.

Sub-sections (1a) and (1*b*) inserted by the East Bengal Ordinance Nos. III of 1956 and IV of 1959 respectively, refer to the time within which a rent-receiver may apply for scaling down his debts. Under the former sub-section a rent-receiver whose Compensation Assessment-roll has been published may apply to the Revenue-officer for scaling down of his debts within three months from the coming into force of the Ordinance of 1956 referred to above. Under the latter sub-section a rent-receiver whose properties were under the management of the Court of Wards and whose Compensation Assessment-roll has been published before the coming into force of the Ordinance of 1959 may apply to the said officer for scaling down of his debts within three months from the said date.

Sub-section (2) provides that if any rent-receiver holds properties in different areas, no action will be taken for scaling down of the debts until the Compensation Assessment-rolls in respect of all such areas have been prepared and finally modified under section 54.

Sub-sections (3) and (4) refer to rules 75 and 74 respectively, the provisions of which have been considered above.

Clauses *(a)* and *(b)* of sub-section (5) lay down that the creditor will not be entitled to recover any debt in excess of the amount of debt so scaled down under the clauses of sub-

section (1) and the liability of the rent-receiver for the balance of the debt shall be extinguished. The debts will be recoverable only from the compensation money and shall be limited to and shall not exceed half of the total compensation money.

Under the proviso to sub-section (5) no portion of the debt of a rent-receiver which is secured entirely by a mortgage or charge on his properties which have not been acquired shall be recoverable from the compensation money payable to him. The purpose of the legislature in relation to such debts is that they are recoverable in full from the properties upon which they are secured.[53]

Under clause *(c)* of sub-section (5) the secured debts shall have preference over the debts not so secured. Any amount available after payment of the secured debts shall be rateably distributed for payment of unsecured debts.

In the explanation of section 70 which was introduced by the Amending Act of 1956, it is provided that for the purpose of this section the lands retained by a rent-receiver under section 20 shall be deemed as not acquired under the Act. What has been allowed to be retained by such persons are properties excepted from the operation of the Act and therefore it can be said that these properties are not acquirable.[54]

71. Provincial Government to authorise Revenue-officer to take action under section 70 : (1) It shall be competent to the Provincial Government to authorise any Revenue-officer to scale down the debts of rent-receivers in any area under section 70 and to take other actions required or permitted by that section.

(2) A Revenue-officer, authorised under sub-section (1), shall publish in the prescribed manner a notice calling upon every creditor to submit to him within a prescribed period and in a prescribed form a statement showing all debts of the nature referred to in sub-section (1) of section 70 owed to him by the rent-receivers in such area whose interests have been

53. *United Industrial Bank v. Mohan Bashi* (1959) 11 D.L.R.(S.C.) 369.
54. *Mofazal v. Abdus Sattar* (1963) 16 D. L. R. 92.

acquired under section 3 or section 44 and who have applied under sub-section (1) of section 70 for scaling down their debts and such other particulars as may be prescribed.

(3) A creditor who has failed to submit under sub-section (2), within the period referred to therein, the statement of any debt of the nature referred to in sub-section (1) of section 70, the liability of the debtor to pay such debt shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be extinguished.

(4) After the expiry of the period referred to in sub-section (2), the Revenue-officer shall examine the statements of debts and other particulars submitted under that sub-section and shall, after giving the creditors and the debtors an opportunity of being heard and making such enquiries as he deems fit, make necessary modification in such statements.

(5) After a statement of debts has been examined and necessary modifications made therein under sub-section (4), the Revenue-officer shall proceed to scale down all debts shown in such statement as so modified in accordance with the provisions of section 70 and to take other actions in respect of such debts required or permitted by that section and in doing so and taking all other actions required or permitted by this Chapter the Revenue-officer shall follow such rules relating to procedure and other matters as may be made in this behalf by the Provincial Government.

(6) An appeal, if presented within a prescribed period, shall lie against an order passed by a Revenue-officer under this section to a Special Judge appointed under sub-section (4) of section 48; and the decision of the Special Judge and subject only to such decision and order of the Revenue-officer shall be final.

(7) A debt recoverable under this Chapter from the total compensation money payable to the debtor under a Compensation Assessment-roll or Compensation Assessment-rolls shall be so recoverable in the manner prescribed.

Note : Sub-section (1) empowers the Provincial Government to authorise any Revenue-officer to scale down

the debts of a rent-receiver. Under sub-section (2) the Revenueofficer shall publish a notice calling upon every creditor to submit to him in a prescribed form a statement showing all debts owed to him by the rent-receiver whose interests have been acquired under section 3 or section 44. The statement is to be submitted by every creditor within a period of three months from the date of the publication of the notice.[55] Under sub-section (3) a creditor who has failed to submit the statement of any debt, the liability of the debtor to pay the debt shall be deemed to be extinguished. The Revenue-officer is required, under sub-section (4), to examine the statements of debts and to make necessary modification in such statements after giving the creditors and debtors an opportunity of being heard. After that he will proceed under sub-section (5) to scale down all debts in accordance with the provisions of section 70.

Under Rule 77 the Revenue-officer is to prepare a draft debt settlement roll in form No. XVI and to send a copy thereof, with a notice, to the indebted rent-receiver and the creditor concerned informing him that he may file his objections, if any, against any entry in, or omission from, such roll within 30 days from the date of receipt of such notice. After considering the objections, if any, the Revenue-officer shall draw up the final debt settlements roll in the said form and send a copy thereof to an indebted rent-receiver and his creditor.

Under sub-section (6) an aggrieved party may prefer an appeal to the Special Judge within 30 days from the order of the Revenue-officer.[56]

Under sub-section (7) read with Rule 79 a creditor shall apply to the Revenue-officer for payment of the debt to be made out of the compensation money payable to the indebted rent-receiver.

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55. Rule 76(5).
56. Rule 78.

CHAPTER -XI
Miscellaneous

[Chapter XI embodies a variety of miscellaneous rules. Section 72 ousts the jurisdiction of the Civil Court in respect of the preparation, signing and publication of a Compensation Assessment-roll or in respect of any entry in or omission from such roll. Section 73 empowers a Revenueofficer to enter upon any land to make survey. Under section 74 he may by notice require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any estate, tenure or holding or land at a time or place specified in the notice. Section 75 has also empowered him to summon and enforce the attendance of withnesses or of any person having an interest in any estate, tenure, holding or land and to compel the production of documents. Section 75 prohibits subletting. It provides that on and from the date of publication of a notification under sub-section (3) of section 17 or under subsection (1) of section 31, no person shall sublet any land in his *khas* possession in the area to which such notification relates. Any sub-letting made in contravention of this section shall be null and void and the land so sublet shall be forfeited to the Provincial Government. Under section 76 any land which vests in the Provincial Government under any of the provisions of the Act shall be absolutely at the disposal of the Provincial Government and the Government shall be competent to make settlement or such land or to use or otherwise deal with such land in such manner as it thinks fit. Section 76A speaks of creation of separate estate and apportionment of revenue. Section 76B makes provision for recovery of advance rent realised by outgoing rent-receivers. Section 77 protects the officials from any act done in good faith in pursuance of the Act or any rules made thereunder. Under section 77A the Provincial Government may delegate its powers to any officer or authority subordinate to it. Under section 78 the Provincial Government may make certain rules for carrying out the purposes of parts II, III and IV of the Act.]

72. Bar to jurisdiction of Civil Courts in certain matters : Save as expressly provided in this Part, no suit shall be brought in any Civil Court in respect of the preparation, signing and publication of a Compensation Assessment-roll or any part thereof under Chapter V [or Chapter VA][1] or in respect of any entry in or omission from such roll or in respect of any order passed under Chapters V to X concerning any matter which is or has already been the subject of any application made or proceedings taken under those Chapters.

73. Power to enter, upon land, to make survey, etc : A Revenue officer, subject to any rules made under this Act, may at any time between the hours of sunrise and sunset enter upon any land with such officers or servants as he considers necessary, and make a survey or take measurements thereof or do any other acts which he considers to be necessary for carrying out any of his duties under this Act.

74. Power to compel production of statements and documents : (1) Subject to rules made under this Act, a Revenue-officer may, for the purposes of this Act, by notice require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any estate, tenure, holding or land at a time or place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Pakistan Penal Code.

75. Power to enforce attendance of witnesses and production of documents : For the purposes of any enquiry under this Act, a Revenue-officer shall have power to summon and enforce the attendance of witnesses or of any person having an interest in any estate, tenure, holding or land and to compel the production of documents by the same means and so far as may be, in the same manner as is provided in the case of Civil Court under the Code of Civil Procedure, 1908.

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1. These words, figure and letter were inserted by the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952), section 24.

75A.[2] Prohibition of subletting : (1) On and from the date of publication of a notification under sub-section (3) of section 17 or under sub-section (1) of section 31, no person shall sublet any land in his *khas* possession in the area to which such notification relates.

(2) Any subletting made in contravention or sub-section (1) shall be null and void [and the land so sublet shall be forfeited to the Provincial Government.][3]

(3)[4] Any person may, at any time, apply to the Provincial Goverment for the acquisition of any of his *khas* lands under sub-section (2) of section 3 on payment of compensation at the rate prescribed for such land in section 39.

Note : The object of section 75A appears to be that since after the acquisition of the interests of rent-receivers, they were allowed to retain certain classes of retainable *khas* lands as tenures directly under the Goverment, they should not be allowed to create further sub-tenancies under them.[5] If subletting is allowed, it will again create rent-receiving interest which will defeat the very object of the passing of the Act. So subletting is prohibited under this section. The intention is made further manifest by the provisions of sub-section (3) of this section which provides that if any person holding land does not wish to retain it in his *khas* possession he may apply to the Provincial Government for the acquisition thereof and payment of compensation at the prescribed rate.

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2. Section 75A was inserted by the E. B. State Acquisition and Tenancy (Amendment) Act. 1954 (E. B. Act XII of 1954), section 13.
3. These words were added by the E. B. State Acquisition and Tenancy (Amendment) Act, 1956 (E. B. Act IV of 1956), section 3.
4. Sub-section (3) was substituted for the former sub-section (3) by section 3, *Ibid.* The former sub-section (3) reads as follows :— "(3) Nothing in sub-sections (1) and (2) shall apply to the subletting of any land purchased by a landlord in execution of a rent decree or surrender or abandoned under the provisions of the Bengal Tenancy Act,1885, or the Sylhet Tenancy Act.1936, when such land is sublet at a rent not more than the rent which was payable for such land by the outgoing tenant."
5. *Province of East Pakistan v. Md. Hossain* (1964) 16 D.L.R.(S. C.) 667.

This section was incorporated in 1954 and came into operation only when a notification giving notice of the intention to undertake the preparation of the record-of-rights under section 17(3) or of the Compensation Assessment-roll under section 31(1) was given.[6] It placed a complete embergo on sub-letting of any land in the *khas* possession of any person within the area or areas specified in the notification. If the land is let out in contravention of this section, it will be null and void and the land so sublet will be forfeited to the Provincial Goverment after the amendments of this section in 1956.[7] Similar provision has been made in section 93 restricting sub-letting of a holding or any part thereof. Though this section came into force on the 30th August, 1954, it was made operative only from the date of notification under section 17(3) or section 31(1) and as such it had no retrospective operation and did not invalidate leases created before such date. The provisions of sections 9 to 9D would still continue to govern such cases.[8] All that happened after the publication of the notification under section 17(3) was that the authority prescribed under section 9 could no longer permit a transfer by lease.[9]

The view that even in the case of a lease created after the issue of notification under section 17(3) which was effected on the 16th December, 1955, the provisions of sections 9A and 9B should have been resorted to for effecting a forfeiture of the lease-hold land cannot be accepted as sound.[10] This would render the provisions of sub-section (2) of section 75A wholly nugatory.[11] If the authority prescribed under section 9 has no power to grant permission to transfer by lease after the date of the relevant notification, he obviously has also no power to grant any relief against such forfeiture in the case of lease created after such date.[12]

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6. *Province of East Pakistan v. Md. Hossain* (1964) 16 D. L. R. (S. C.) 667.
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*

Meaning of sub-letting : Sub-letting has not been defined under the East Bengal State Acquisition and Tenancy Act, 1950. But section 2(31) of the Act provides that words used in the first four parts of the Act (within which section 75A occurs) but not defined therein are to be given the same meaning as they bear in the Bengal Tenancy Act, 1885 or the Sylhet Tenancy Act, 1936. Sub-letting under the latter Act connotes the creation of a subordinate tenancy under which the sub-lease would, but for a special contract, be liable to pay rent for that land to a person other than the Provincial Government.[13]

Difference between lease and sub-lease : Under the general law relating to transfer of property, a sub-lease or under-lease connotes the transference of only a part of the original lessee's interest, whereas the transference of the whole of the interest in the lease by the transferor amounts to an assignment of the lease-hold interest.[14] The assignee of a lease stands in the place of the original lessee and becomes a tenant of the original landlord.[15] A sub-lessee on the other hand is liable only to the sub-lessor; he cannot sue or be sued by the original landlord.[16]

75B.[17] Fees for application for enquiry : An application for fresh enquiry during the preparation or revision of record-or-rights or preparation of Compensation Assessment-rolls under this Act shall be accompanied by such fee as may be prescribed.

76. Settlement and use of land vested in the Provincial Government : (1) Except as otherwise expressly provided in this Act, any land which vests in the Provincial Government under any of the provisions of this Act shall be absolutely at the disposal of the Provincial Government; and the

13. *Province of East Pakistan v. Md. Hossain* (1964) 16 D.L.R.(S.C) 667.
14. *Ibid.*
15. *Ibid.*
16. *Ibid.*
17. Section 75B was added by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E.B. Ord. III of 1956), section 18.

Provincial Government shall be competent to make settlement of such land in accordance with such rules as it may make in this behalf or to use or otherwise deal with such land in such manner as it thinks fit :

Provided that no land shall be settled with a person unless he is a person to whom transfer of land can be made under section 90.

Provided further that in making settlement of any cultivable land preference shall be given to an applicant for settlement who cultivates land by himself or by the members of his family and holds a quantity of cultivable land which, added to the quantity of cultivable land, if any, held by the other members of his family, is less than three acres.

(2) No Civil Court shall entertain any application or suit concerning any matter relating to the settlement, by any officer of the Provincial Government, of any land under sub-section (1).

Explanation—For the purposes of this section, the definition of "family" as given in the explanation under section 20 shall apply *mutatis mutandis*.

76A.[18] Creation of separate estate and apportionment of revenue : Notwithstanding anything contained in any other law for the time being in force or in any contract.—

(1) when the interests of a rent-receiver or rent-receivers in a share or part of any estate have been acquired by the Provincial Government under sub-section (1) of section 3 or clause (1) of section 44, nothing in the Bengal Land Revenue Sales Act, 1859 or in Chapter V of the Assam Land and Revenue Regulation, 1886, shall apply to such share or part, and the remaining share or part of such estate shall be deemed to constitute a separate estate for the purpose of the aforesaid Act or Regulation, as the case may be; and

18. Section 76A was added by the E. B. State Acquisition and Tenancy (Amendment) Act, 1954 (E. B. Act XII of 1954), section 14.

(2) the land-revenue and cesses payable for the parent estate shall be apportioned, between the acquired share or part and the separate estate constituted under clause (1), according to the following principles, namely :—

(a) when an acquired share consists of a separate account or separate accounts, the land-revenue and cesses of such separate estate shall be equivalent to the difference between the land-revenue and cesses payable for the parent estate and the land revenue and cesses fixed for the acquired separate account or accounts :

(b) when an acquired share does not consist of a separate account, the land-revenue and cesses of such separate estate shall bear the same proportion to the land-revenue and cesses of the parent estate as the share comprised in the separate estate bears to the parent estate;

(c) when an acquired share consists of a specific portion of the land of an estate having no separate account or when a part of an estate is acquired, the land-revenue and cesses of such separate estate shall bear the same proportion to the land-revenue and cesses of the parent estate as the area of the land comprised in the separate estate bears to the area of the entire land comprised in the parent estate;

(3)[19] When the interests in a portion of a tenure, holding or other tenancy have been acquired under this Act and such portion consists of a definite share, the rent of such tenure, holding or tenancy shall be apportioned between the acquired and unacquired portions according to such share, but when it does not consist of a definite share, the Revenue-officer may apportion the rent of such tenure, holding or tenancy between the acquired and unacquired portions on the basis of the area or value as may appear to him fair and equitable.

19. Clause (3) was added, after substituting a semi-colon for the fullstop at the end of clause (2) of section 76A, by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1956 (E. B. Ordinance III of 1956), section 19.

76B.[20] Recovery of advance rent or bid money realised by outgoing rent-receivers : When the Revenue-officer is satisfied that a rent-receiver, whose interests have been acquired under this Act, has realised any amount on account of the rent or bid money or consideration money in respect of any such interests for any period subsequent to such acquisition, he may recover such amount or any part thereof from such rent-receiver as a public demand.

77. Protection of action taken under this Act : (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Provincial Government for any damage caused or likely to be caused or for any injury suffered or likely to be suffered by virtue of any provisions of this Act or by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

77A.[21] Delegation of the powers of the Provincial Government : The Provincial Government may, by notification, direct that any power conferred or duty imposed by this Act upon the Provincial Government shall, in such circumstances and under such conditions, if any, as may be specified in the notificaiton, be exercised or performed also by any officer or authority subordinate to it.

78. Power to make rules : (1) The Provincial Government may, after previous publication, make rules for carrying out the purposes of Parts II, III and IV of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

20. Section 76B was added by section 20 of the E. B. State Acquisition And Tenancy (Amendment) Ordinance, 1956(E.B. Ordinance III of 1956).

21. Section 77A was inserted by the E. B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. No.XV of 1961), s.5.

(a) the forms of the notifications referred to in sub-section (3) of section 3 and the particulars which such notifications shall contain;

(b) the manner of service of the notice and the form of the return referred to in sub-section (1) of section 4;

(c) the time and manner of receiving an *ad interim* payment referred to in sub-sections (1) and (2) of section 6;

(d) the determination of the amounts of deductions referred to in sub-section (4) of section 6;

(e) the manner of and the period for filing appeals referred to in section 7;

(f) the manner of recovery of fines referred to in section 8;

(g) [22] * * * * * * *

(h) the form of the applications referred to in section 15, the particulars which such applications shall contain and the amounts of process fees which shall accompany such applications;

(i) the manner of preparing or revising a record-of-rights under section 17 and the procedure to be followed and the powers to be exercised by Revenue-officers in preparing or revising such record-of-rights;

(j) the particulars to be recorded in the record-of-rights to be prepared or revised under section 17;

(k) the manner and period of publication of the draft record-of-rights under sub-section (1) of section 19;

(l) the Revenue Authority to whom, the manner in which and the period within which an appeal under sub-section (2) of section 19 may be preferred ;

(m) the disposal of objections and appeals under section 19;

(n) the manner of publication of the record-of-rights under sub-section (3) of section 19;

22. Clause (g) was omitted by E. P. Act VI of 1964, section 4.

(o) the period for exercise of choice under sub-section (3) of section 20 and the manner of allotment of lands under the said sub-section when no choice is exercised;

(p) the manner of selection of land under clause (ii) of sub-section (5) of section 20 which shall come within the purview of sub-clause (c) of clause (f) of the said sub-section;

(q) the manner of and the procedure for revising the particulars referred to in sub-section (2) of section 31 and the powers to be exercised by Revenue-officer for the purpose;

(r) the form of a Compensation Assessment-roll under section 33, the manner of preparing it and the particulars to be specified therein;

(s) the manner of calculation of the sums and determination of the expenditure and charges referred to in sub-section (2) of section 35;

(t) the procedure to be followed in the apportionment of the compensation between the holder of a temporary tenure or tenancy and his immediately superior landlord under clause (2) of section 37;

(u) the manner of and the procedure for the calculation of compensation and preparation of Compensation Assessments-rolls in cases referred to in section 38;

(v) the manner of determination of the annual letting value of lands referred to in items *(e)* and *(f)* and the manner of determination of the actual cost of construction and the amount on account of depreciation referred to in item *(f)* of the table in sub-section (f) of section 39;

(w) the manner of determination of the normal annual produce of land under clause *(a)* of sub-section (3) of section 39;

(x) the manner of determination of the cost of cultivation referred to in sub-clause *(i)* of clause *(b)* of sub-section (3) of section 39;

(y) the manner of determination of net annual profit from fisheries referred to in sub-section (4) of section 39;

(z) the procedure to be followed in making the apportionment of compensation referred to in subsection (5) of section 39;

(za) the manner and period of publication of a draft Compensation Assessment-roll under sub-section (1) of section 40 and disposal of objections under that sub-section;

(zb) the Revenue Authority to whom appeals under section 41 are to be preferred and disposal of appals under that section;

(zc) the manner of publication of a Compensation Assessment-roll under section 42;

(zd) the manner of publication of a proclamation under section 45;

(ze) the assignment under sub-section (1) of section 46 of numbers to be borne on the revenue-roll of a district in respect of areas to which a record-of-rights referred to in that sub-section relates and the manner in which copies of record-of-rights shall be distributed under sub-section (2) of that section;

(zf) the powers and duties of the Commissioner of State Purchase referred to in sub-section (2) of section 48;

(zg) the powers and duties of the Director of Land Records and Surveys referred to in sub-section (3) of section 48;

(zh) the form of application referred to in sub-section (1) of section 52 or in section 53;

(zi) the manner of ascertaining excess payment under sub-section (2) of section 57 and the superior Revenue Authority referred to in the second proviso to that sub-section;

(zj) the manner of computing the sum referred to in section 67 and the manner and instalments for its

payment to an outgoing rent-receiver under the said section;

(zk) the manner of application under sub-section (1) of section 70;

(zl) the manner of and the procedure for the determination of the extent of reduction in the net income referred to in sub-section (3) of section 70 ;

(zm) the manner of and the procedure for the calculation of the net annual income and the income referred to in sub-section (4) of section 70;

(zn) the manner of publication of a notice under sub-section (2) of section 71 and the form in which and the period within which a statement referred to in that sub-section is to be submitted and the particulars which such statement shall contain;

(zo) the rules referred to in sub-section (5) of section 71;

(zp) the period for presenting an appeal under sub-section (6) of section 71;

(zq) the manner of recovery of debts under sub-section (7) of section 71;

(zr) the procedure and conduct of the Revenue-officers and of officers and servants referred to in section 73;

(zs) the exercise of powers under sub-section (1) of section 74 to enforce the making the delivery of statement and production of records or documents;

(zt) the rules for settlement of lands referred to in section 76.

PART –V

CHAPTER–XII

Application of this Part and class of agricultural tenants

79.[1] **Commencement of this Part :** This Part or any portion thereof shall come into force in such areas, on such dates and to such extent as the Provincial Government may be notification, direct and when any portion of this Part comes into force in any area, the provisions of such portion shall have effect in such area notwithstanding anything contained in any other law for the time being in force.

80.[2] **Repeal :** On and from the date of coming into force of [the whole of this Part][3] in any area, the enactments specified in the Schedule shall be repealed in that area to the extent mentioned in the fourth column of the Schedule.

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1. Section 79 was first substituted for the original section 79 by the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act VI of 1952), Section 25. The original section 79 read as follows :—

   "79. This Part shall not apply to any area unless a notification has been published under sub-section (2) of section 43 declaring that a Compensation Assessment-roll in respect of such area has been finally published, and shall come into force in such area on and from the first day of the agricultural year next following the date of publication of such notification in the *Official Gazette.*"

   This section was again substituted for former section 79 by East Pakistan Ordinance XV of 1961, section 6.

   The former section read as follows :—

   79. This Part shall come into force in such areas and on such dates as the Provincial Government may, by notification, direct.

2. Section 80 was substituted for the original section 80 by the E. B. State Acquisition and Tenancy (Amendment) Act, 1952 (E. B. Act. VI of 1952), section 26. The said original section 80 read as follows :—

   "80. On and from the first day of the agricultural year next following the date of publication of a notification in the *Official Gazette* under sub-section (2) of section 43 declaring that a Compensation Assessment-roll has been finally published, the enactments specified in the Schedule shall, in the area to which such roll relates, be repealed to the extent mentioned in the fourth column thereof."

3. The words "the whole of this part" were substituted for the words "this part" by the E. B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. B. Ordinance No. XV of 1961.)

81. Class of agricultural tenants and regulation of their rights and liabilities : (1)[4] On and from the date of coming into force of the whole of this Part in any area, there shall, within that area, be only one class of holders of agricultural land, namely, *maliks*, and the rights and liabilities of every such land-holder shall be regulated by the provisions of this Part:

Provided that nothing in this section shall confer on any such *malik* any right to any interests in the sub-soil including rights to minerals in his holding :

Provided further that when the Provincial Government lease out any land for any particular period, the rights and liabilities of such a lessee shall be governed by such terms and conditions as may be set forth in the lease.

(2). ....[5]

(3). .. ..[5]

81A.[6] **Rights and liabilities of non-agricultural tenants :** (1) Except as otherwise provided in this Part, the rights and liabilities of a holder of non-agricultural land, who has become a tenant under the Provincial Government in respect of such land by virtue of the acquisition of the superior right in such land under the provisions of this Act, shall, where the provisions of the East Bengal Non-Agricultural Tenancy Act.

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4. Sub-section (1) was substituted for the original sub-section (1) of section 81 by section 27 of E. B. Act. VI of 1952. The said original sub-section (1) read as follows :—

   "(1) On and from the first day of the agricultural year immediately following the publication of a notification in the *Official Gazette* under sub-section (2) of section 43 declaring that a Compensation Assessment-roll has been finally published, there shall, within the area to which such roll relates, be only one class of tenants of agricultural land, namely, *raiyats*, and the rights and liabilities of every such *raiyat* shall be regulated by the provisions of this Part."

   This sub-section (1) was again substituted for the former sub-section (1) by E. P. Ord. XV of 1961, section 8.

5. Sub-section (2) and (3) of section 80 were omitted by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E. P. Ordinance No.VIII of 1967), section 5.

6. Section 81A was inserted by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E. P. Ordinance No.VIII of 1967), section 6.

1949, applied to such land, at the time of such acquisition, be regulated by the provisions of that Act.

(2) The rights and liabilities of other non-agricultural tenants shall, except in the matter of determination, enhancement or reduction of rent, be governed by the terms of the lease and the provisions of the Transfer of Property Act, 1882 :

Provided that, notwithstanding anything contained in this Act or in any other law for the time being a force or in any contract, no non-agricultural tenant shall sub-let the whole or any part of his tenancy on any terms and conditions whatsoever and, if any tenancy or any part of a tenancy is sub-let in contravention of this provision, the interest of the non-agricultural tenant in the tenancy or in that part of the tenancy, as the case may be, shall be extinguished, and the tenancy or the part of the tenancy shall vest in the Provincial Government from the date of such sub-letting free from all encumbrances.

81B. Registration of Lease Deed.—Notwithstanding anything contained in section 81 and 81A or any other law for the time being in force, no agricultural or non-agricultural tenancy shall in law be created or deemed to have been created, even after acceptance of salami and /or rent from the leasee, till a deed of lease has been executed in favour of the lessee by any authority competent to grant lease of Government khas land or any other gazetted officer duly authorised in this behalf and the said lease has been duly registered under the provision of clause (d) of sub-section (1) of section 17 of the Registration Act, 1908.

82. Interpretation : In this Part, —

(1) "*bona fide* cultivator" means a person who cultivates lands by himself or by members of his family or by, 'or with the aid of, servants or labourers or with the aid of partners or *bargadars* and also includes an agricultural labourer;

(2) "*raiyat*" means a person who, by virtue of section 44 or otherwise, has acquired a right to hold land directly under the Provincial Government mainly for the purpose of cultivating it by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars*, and includes also the successors-in-interest of persons who have acquired such a right; * * * * * * *[7]

(3) the family of a *raiyat* includes all persons living in the same mess with him and dependent upon him but does not include any servant or labourer;][8]

[(4) '*total holding*' means the total quantity of agricultural land held by a *raiyat* either independently or in the form of a share in a holding, otherwise than on lease under the second proviso to sub-section (1) of section 81, but does not include his homestead, and, if the homestead contains no additional land, also arable land up to an area of 15 decimals;

(5) '*subsistance holding*' means a total holding of nine standard *bighas;*

(6) '*economic holding*' means a total holding of twenty-four standard *bighas;*

(7) except when expressly provided otherwise, 'transfer' includes a transfer by private sale, mortgage, gift or any contract or a agreement; and

(8) on and from the date of coming into force of the whole of this Part in any area, the word '*malik*' shall be deemed to have been substituted for the word '*raiyat*' or 'tenant' and the word 'land revenue' shall be deemed to have been substituted for the word 'rent' wherever they occur in this Part in relation to agricultural land, for the purpose of application of the provisions of this Part to such area and where by the terms of any lease, *kabuliyat*, contract or other agreement, rent is payable to the Provincial Government, it shall be realisable as if it were land revenue][9]

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

7. The word "and" at the end of clause (2) was omitted by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. XV of 1961), section 9.
8. The semi colon at the end of clause (3) was substituted for the fullstop, *ibid.*
9. Clauses (4), (5), (6), (7) and (8) were inserted, by the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E. P. Ord. XV of 1961), section 9.

CHAPTER –XIII

Incidents of holdings of *raiyats*, and transfer, purchase and acquisition of lands.

[Chapter XIII is one of the most important portion of the Act, inasmuch as it deals with the rights and liabilities of a *raiyat*. Section 83 allows a *raiyat* to use his land in any manner he likes. Under section 84 his holding is heritable. Section 85 speaks of the grounds for eviction of a *raiyat*. Section 86 provides for abatement of rent of account of diluvion and re-entry into lands after re-appearance. Section 87 deals with rights in land gained by gradual accession from the recess of a river or sea. Section 88 gives right to a *raiyat* to transfer his holding. Section 89 deals with the manner of transfer. Section 90 deals with limitation of transfer of holding. It says that no person shall be entitled to purchase or otherwise acquire any quantity of land which, added to the total quantity of land already held by him for himself and his family, exceeds 375 standard *bighas*. Section 91 empowers the Provincial Government to acquire the land in excess of the limit. Section 92 enumerates the circumstances that will extinguish the interest of a *raiyat*. Section 93 restricts sub-letting. Section 94 deals with transfer of encumbrances. Section 95 puts restriction on the transferability of a *raiyat's* holding by mortgage. Section 96 deals with pre-emption. Section 97 restricts alienation of land by aboriginals.]

83. Right of *raiyat* in respect of use of land : A *raiyat* shall have the right to occupy and use the land comprised in his holding in any manner he likes.

84. Devolution of holding on the death of a *raiyat* : If a *raiyat* dies intestate his holding shall subject to, and in a manner not in-consistent with, the provisions of this Act, descend in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance, to which the *raiyat* is subject, his other property goes to the State, his interest in the holding shall be extinguished.

85. Ground for eviction of *raiyats* : A *raiyat* shall not be ejected from his holding or from any part of his holding, except in execution of a decree for ejectment from the whole holding or from any part of the holding, as the case may be, passed by a Civil Court, on the ground that he has done any act in contravention of the provisions of this Act with respect to the whole holding or the Part concerned.

86. Abatement of rent on account of diluvion and re-entry into lands which re-appear : (1) If the lands of a holding or a portion of such lands are lost by diluvion, the rent of the holding shall, on application made by the tenant in the prescribed form to the Revenue-officer, be abated by such amount as may be considered by the Revenue-officer to be fair and equitable in accordance with the rules made in this behalf by the Provincial Government.

(2) Notwithstanding anything contained in any other law for the time being in force, the right, title and interest of the tenant or his successosrs-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion, not exceeding twenty years, whether partly before and partly after or wholly after the commencement of this Part; and the tenant or his successor-in-interest shall have the right to immediate re-possession on the re-appearance of such lands or portion thereof within twenty years of their loss by diluvion, and be liable to pay [the arrears of rent without interest or damage in respect of the land which has re-appeared for the period during which it was lost or for four years whichever is less][1]:

Provided that when the lands or portion thereof which have so re-appeared added to the total area of land already in the possession of such tenant or his successors-in-interest

1. The words within brackets were substituted for the words "such fair and equitable rent in respect thereof as may be settled by the Revenue-officer" by the East Bengal State Acquisition and Tenancy (Amendment) Ordiance, 1967 (E.P. Ord. No. VIII of 1967), section 7.

exceed the area of land which the tenant was allowed to retain in his possession under section 20, or the limit laid down in section 90, whichever be greater, such tenant or his successors-in-interest shall not have the right to repossession of such excess area of land; and such excess area shall vest in and be at the disposal of the Provincial Government:

Provided further that allotment of lands, of which such tenant or his successors-in-interest are entitled to re-possession under the above proviso, shall be made according to the choice of such tenant or his successors-in-interest:

Provided[2] further that the provision of this sub-section shall not apply to cases of re-appearance of lands caused or accelerated by any artificial or mechanical process as a result of development works undertaken by Government or by the East Pakistan Water and Power Development Authority or by the East Pakistan Agricultural Development Corporation.

Note : Section 86 makes provision for abatement of rent on account of diluvion and re-entry into lands which re-appear afterwards. Diluvion means gradual erosion or submersion of the land either by a river or a sea.

Under sub-section (1) if the holding or a portion thereof is lost by diluvion, the Revenue-officer will, on an application made by the tenant to him, abate the amount of rent which in his opinion will be fair and equitable. Under sub-section (2) the right, title and interest of the tenant or his successors-in-interest in the sub-merged land shall subsist for a period of 20 years. If the land re-appears within that period, the tenant can take possession of that land on payment of the arrears of rent without interest or damage for a period during which it was lost or for four years whichever is less. We have noted before that under section 20 a tenant is not entitled to retain more than 375 standard *bighas* of land. So when after re-appearance the lands or portion thereof added to the total area of land already in the possession of the tenant or his successors-in-interest exceeds the prescribed limit, he shall

2. This proviso was added by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P.Ord. No. VIII of 1967), section 7.

have no right of re-entry in such excess area of land which shall vest in the Provincial Government and shall be at the disposal of that Government. The tenant will, however, have option to choose the land of which he is entitled to re-possession.

The re-appearance of land as laid down in section 86 is based on the doctrine of reformation in *situ*. *Lopez v. Madan Mohan Thakur*[3] is the leading case on the point. According to the ruling of that case the doctrine rests upon the principle that in contemplation of law land submerged by water is identical to the land covered by crops. The site is property. The original owner is deemed to be in constructive possession of the land. In order to resume ownership on re-appearance of the land two conditions must be satisfied. *viz.*, (1) proof of non-abandonment by the original owner, and (2) proof of identity of site that has re-appeared.

86A. Bar on suits, etc., for certain period .—No suit, prosecution or other legal proceeding shall lie in any court in respect of any land covered under section 86 during a period of twelve months commencing on the date of first giving public notice under sub-section (4) 86 in order to enable the Collection to complete the processes under that section.

87. Rights in land gained by gradual accession from recess of river or sea : (1) Notwithstanding anything contained in any other law for the time being in force, when any land has been gained by gradual accession, whether from the recess of a river or of the sea, it shall, sbuject to the provisions of sub-section (2) be considered an increment to the holding of the *raiyat* to whose land it is thus annexed; and such *raiyat* shall be entitled to hold such land subject to the payment of such fair and equitable rent as may be determined for such land by the Revenue-officer.

(2) It, when the whole or any part of the land which has been gained by such gradual accession is added to the total area of land including non-agricultural land, if any, held at

3. (1870) 13 M.I.A. 467=5 B.L.R.521.

the time by the *raiyat* to whose land it is so annexed, the aggregate of the areas of land held by him exceeds the limit laid down in section 90, then such excess shall not be considered as an increment to the holding of such *raiyat* but shall be at the disposal of the Provincial Government:

Provided that the limitation in respect of the area of the land in this sub-section shall not apply to a *raiyat* who has been certified in the prescribed manner by the prescribed Revenue Authority to be a person who has undertaken large scale farming on a co-operative basis or otherwise by the use of power-driven mechanical appliances or to any land which is held for the purpose of cultivation and manufacture of tea or to any land held by a company for the cultivation of sugarcane for the purpose of manufacture of sugar by that company :

Provided[4] further that the provisions of sub-section (1) and (2) shall not apply to cases of gradual accession to lands caused or accelerated by any artificial or mechancial process as a result of development works undertaken by Government or by the East Pakistan Water and Power Development Authority or by East Pakistan Agricultural Development Corporation.

(3) In dealing with any such excess at the disposal of the Provincial Government, the Revenue-officer shall decide, in such manner as he may deem fair and equitable, after giving any parties interested an opportunity of being hears, which portion, being equal to such excess, of the land so annexed shall so be at the disposal of the Provincial Government and shall serve a notice on the *raiyat* in the prescribed form and manner stating the boundaries of the land so decided as being at the disposal of the Provincial Government; and thereupon such land shall vest in the Provincial Government absolutely.

4. This proviso was added by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No.VIII of 1967), section 8.

Note : Section 87 deals with land gained by *alluvion*. "*Alluvion* is an imperceptible increase; and that is added by *alluvion* which is added so gradually that no one perceives how much in added at any one moment of time. the deposit of earth gradually formed by *alluvion* upon the bank of river is inseparable from the native soil of the bank and the owner of the latter acquires the former by right of accession" (Justinian).

Under sub-section (1) when any land has been gained by gradual accession from the recess of a river or a sea, it will be considered an increment to the holding of the *raiyat* to whose land it is annexed. The *raiyat* who owns the holding shall be the owner of the accreted land on payment of such fair and equitable rent as may be determined by the Revenue-officer. Under sub-section (2) he is entitled to retain only so much of the *alluvial* land which together with his other lands does not exceed 375 standard *bighas*. The portion of the land exceeding that limit shall vest in the Provincial Government and shall be at the disposal of that Government.

The limitation, however, will not apply to a *raiyat* who has undertaken a large scale farming on a co-operative basis or otherwise by the use of power-driven mechanical appliances. Similarly the rule has been relaxed when any land is held for the purpose of cultivation and manufacture of tea or when a company holds any land for the cultivation of sugarcane for the purpose of manufacturing sugar.

Under sub-section (3) the Revenue-officer is to decide which portion of the land so annexed shall be at the disposal of the Government. Before arriving at such a decision he will give the interested parties an opportunity of being heard. He is also required to serve a notice on the *raiyat* stating the boundaries of the land which will go at the disposal of the Government and thereupon the land will vest in the Government absolutely.

The provisions of Part V of the Act in which section 87 occurs were applied in the district of Chittagong from 1st of

August, 1963.[5] As the Bengal Tenancy Act, 1885 was in force till before this date, the clear implication is that Chapter XIII of the Act including section 87 were intended to be operative from the date of application of Part V of the Act by a notification under section 79 thereof and not from an earlier date.[6] It was held[7] that section 87 is not retrospective in operation inasmuch as the provisions of the Bengal Tenancy Act, 1885 and the East Bengal State Acquisition and Tenancy Act, 1950 were not intended to be operative simultaneously.

The rule contained section 87 of the Act is based on the doctrine of *incrementum latens* which means an accretion formed by a process so slow and gradual as to be latent and imperceptible in its progress. The word "gained" within the meaning of this section does not extend to cases of land washed away and afterwards reformed upon the old site which can be clearly recognized.[8] The word "accession" comes from the latin word '*accessio*' which means an increase or addition to something previously belonging to an owner. '*Accessio*' is the general name given by the Roman Jurists to the natural mode of acquisition of ownership by which the owner of the principal becomes, by virtue of such ownership alone, owner also of the accessory.

In order to attract this section the land must be gained by gradual accession, by gradual, slow and imperceptible means. In the well-known case of *Lopez v. Madan Mohan Thakur*[9] it was observed that "where there is an acquisition of land from the sea or a river by a gradual, slow and imperceptible means, there from the supposed necessity of the case and the difficulty of having to determine year by year to whom an inch or a foot or a yard belongs, the accretion by *alluvion* is held to belong to the owner of the adjoining lands."

5. Notification No. S.A. 116/63/609, dated 18th July 1963, published in the Dacca Gazette dated 1st August 1963 Part I, pp. 1169; *Province of East Pakistan v. Iman Sharif* (1965) 18 D.L.R. 276.
6. *Ibid.*
7. *Ibid.*
08. *Lopez v. Madan Mohan* (1870) 13 M.I.A. 467=5 B.L.R.521.
09. (1870) 13 M.I. A. 467 (Per L. James J.)

88.[10] **Transferability of holding of *raiyats* :** (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, and subject to the provisions of sections 75A and 93—

(a) no *raiyat* owning a subsistence holding or a total holding less than a subsistence holding shall transfer any portion of his total holding;

(b) no *raiyat* owning a total holding greater than a subsistence holding, but less than an economic holding, shall transfer any portion of his total holding, if such transfer results in the reduction of his total holding to below the size of a subsistence holding;

(c) no *raiyat* owning an economic holding shall transfer any portion of such holding; and

(d) no *raiyat* owning a total holding greater than an economic holding shall transfer any portion of his total holding, if such transfer results in the reduction of his total holding to below the size of an economic holding:

Provided that in any case where the transfer of a portion of a total holding is prohibited under this section, the *raiyat* may transfer the whole of his total holding :

Provided further that a *raiyat* owning a total holding less than a subsistence holding may transfer a portion of his total holding to a person, if the total area of agricultural land already owned by such person, if the total area of agricultural land already owned by such person constitutes a total holding larger than that of the transferor.

(2) Except as provided in sub-section (1), the holding of a *raiyat* or a share or portion thereof shall, subject to the provisions of this Act, be capable of being transferred by him

10. Section 88 was substituted for the original section 88 by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No. XV of 1961), section 10. The original section 88 read as follows :—
"88. The holding of a *raiyat* or a share or portion thereof shall, subject to the provisions of this Act, be capable of being transferred by him in the same manner and to the same extent as his other immovable property."

in the same manner and to the same extent as his other immovable property.

(3) Where the transfer of any land is permissible under this section, the *raiyat* shall not transfer such land except to a person to whom the transfer of land can be made under sub-section (2) of section 90.

(4) Any transfer of land made in contravention of the provisions of this section shall be null and void and so much of the land or undivided share in land as has been transferred in contravention of the provisions of this section shall be forfeited to the Provincial Government.

(5) For the purposes of this section, "transfer" does not include a complete usufructuary mortgage which does not contravene the provisions of section 95 or would not be contrary to the provisions of that section if it were in force, nor does it include a transfer by exchange prior to, or effected by, the first consolidation of holding under Chapter XV, or any exchange made with the consent of the prescribed Revenue-officer.

(6) No Civil Court shall make any declaration, order, award or decree, the execution of which would involve the transfer of any land or division of any total holding not permittted by this section and no declaration by a Civil Court in a suit for the declaration of right or title in any parcel or part of a parcel of land shall have any effect unless it records a certificate by the prescribed Revenue-officer that he has no reason to believe that such suit was collusive:

Provided that in the course of proceedings for the foreclosure of a mortgage, where the instrument of mortgage was executed before the coming into force of the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961, the Court may, notwithstanding the terms of the mortgage, pass an order for a complete usufructuary mortgage, for a period not exceeding fifteen years, in favour of the mortgagee, of the land involved in such instrument together with such quantity of other land of the mortgagor, if necessary, as would, in the opinion of the court, be sufficient to liquidate the debt.

Note : Section 88 imposes restriction on the transferability of a *raiyat's* holding. The holdings are divided into two categories according to its size, *viz.*, subsistence holding comprising 9 *bighas* and economic holding comprising 24 *bighas*. Under clause *(a)* of sub-section (1) a *raiyat* who holds 9 *bighas* or less than that cannot transfer any portion of his land. Under clause *(b)* a *raiyat* who holds more than 9 *bighas* but less than 24 *bighas* of land cannot transfer any portion of his land if such transfer results in the reduction of his land below the size of subsistence holding. That is to say he should retain 9 *bighas* of land under his plough and he is allowed to transfer the rest. Under clause *(c)* a *raiyat* who holds an economic holding of 24 *bighas* cannot transfer any portion of the land. Under clause *(d)* a raiyat who holds more than 24 *bighas* cannot transfer any portion of the land if such portion results in the reduction of his land below the size of an economic holding. He should retain 24 *bighas* under his plough and he is allowed to transfer the rest.

The restriction as to transfer is, however, relaxed by the proviso to sub-section (1), under which the *raiyat* is allowed to transfer the whole of his total holding whether it is a subsistence holding or an economic holding. Though a *raiyat* possesses less than 9 *bighas* of land, he is allowed to transfer a portion of it to a person if the total area of land already owned by such person constitutes a total holding larger than that of the transferor.

It may be observed that this section imposes a beneficial restriction on the transferability of a holding in the interest of a *raiyat*. He is encouraged to cultivate a minimum area of land that will give him profit. The holding of 9 *bighas* and 24 *bighas* will facilitate intensive cultivation if a cultivator gets such a holding en block.

Except as provided in sub-section (1) the holding of a *raiyat* or a share or portion thereof is transferable in the same manner and to the same extent as other immovable property. But a *raiyat* is not allowed to transfer his land except to a person to whom the transfer of land can be made under sub-section (2) of section 90. If any transfer is made in

contravention of the provisions of this section, it will be null and void and the transferred land shall be forfeited to the Provincial Government. But for the purpose of this section, "transfer" will not include a complete usufructuary mortgage nor will it include a transfer by exchange.

Under sub-section (6) a Civil Court has been debarred from making any declaration, order, award or decree, the execution of which would involve the transfer of any land or division of the total holding not permitted by this section. It is further provided that no declaration by a Civil Court in a suit for the declaration of a right or title in any land shall have any effect unless it records that a certificate was issued by the Revenueofficer to the effect that he has no reason to believe that such a suit was collusive.

According to the proviso to sub-section (6) when a mortgagee filed a suit for foreclosure of a mortgage the Court may, notwithstanding the terms of the mortgage, pass an order for a complete usufructuary mortgage for a period not exceeding 15 years in his favour provided the instrument of mortgage was executed before the coming into force of the East Bengal State Acquisition and Tenancy (Third Amendment) Ordinance, 1961.

89. Manner of transfer : (1) Every such transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a Registering Officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein an unless it is accompanied by—

(a) a notice giving the particulars of the transfer in the prescribed form together with the process fee prescribed for the transmission thereof to the Revenue-officer; and

(b) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration untill the applicant files a notice similar to, and deposits a process fee of the same amount as that referred to in clause (a) of sub-section (1).

(3) No Court or Revenue Authority shall confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files a notice or notices similar to, and deposits process fees of the same amount as that referred to in sub-section (1).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of section 96 apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer and for affixing a copy thereof in the office of the Registering Officer or the Court house or the Office of the Revenue Authority, as the case may be.

(5) The Court, Revenue Authority or Registering Officer, as the case may be, shall transmit the notice referred to in clause *(a)* of sub-section (1) to the Revenue-officer and shall serve the notices on the co-sharer tenants referred to in sub-section (4) by registered post and shall cause a copy of the notice to be affixed in the Court house or in the Office of the Revenue Authority or of the Registering Officer as the case may be :

Provided that the service of such a notice shall not operate as an admission of the amount of rent or the area of such holding by the Provincial Government or by any co-sharer tenant of such holding on whom such notice is served or be deemed to constitute an express consent of the Provincial Government or such co-sharer tenant to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further if a transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceeding to which the Revenue-officer was not a party, the authority before whom the appropriate suit or proceedings was first initiated shall transmit a copy of such order to the Revenue-officer.

(6) In this section—

(a) "transferee," "purchaser" and "mortgagee" include their successors-in-interest, and

(b) "transfer" does not include partition or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale.

Note : Section 89 deals with the manner of transfer of a *raiyat's* holding. It contemplates not only the transfer of a total holding but also a portion or share thereof. The term 'transfer' in this section includes sale, gift, exchange and bequest but not partition or mortgage (whether simple, usufructuary or mortgage by conditional sale) until a decree or order absolute for foreclosure is made.

The first part of sub-section (1) requires that all transfers of *raiyats'* holdings irrespective of their value, are to be effected by registered instrument except in the cases of (1) bequest, (2) sale in execution of a decree and (3) certificate sales. It thus overrides, so far as the holdings are concerned, the provisions of sections 54 and 118 of the Transfer of Property Act, 1882 under which a transfer of tangible immovable property of the value which a transfer of tangible immovable property of the value less than Rs.100.00 can be effected by mere delivery of possession and no registered instrument is necessary. It also overrides the provisions of section 18 of the Registration Act, 1908 under which an instrument of transfer of immovable property of the value less than Rs.100.00 is only optionally registerable. Similarly it abrogates the rule of Muslim law under which a gift of immovable property can be effected simply by delivery of possession. By reason of exemption made in favour of (1)

bequests, (2) sales in execution of decrees and certificates under the Bengal Public Demands Recovery Act, 1913, (3) wills and (4) sale certificates relating to holdings do not require registration under this section. The second part of sub-section (1) requires that an instrument of transfer of a holding or a portion or share thereof must contain a specification of the sale price in the case of a sale and of the value in the case of an exchange or a gift or a bequest of the property transferred and should also be accompanied by the prescribed notice and process-fee. The saleprice in this section means the actual price and the value of the property means the market value of the holding or a portion or share thereof. The provisions of this section are mandatory. So if the Registering Officer accepts and registers an instrument of transfer of a holding or a portion or share thereof in disregard of the provisions of this section, the registration will be invalid and the transfer inoperative. But in that case section 53A of the Transfer of Property Act, 1882 is applicable.[11] The transferee in possession under an unregistered *kabala* may, therefore, protect his possession as against his vendor and "no question of limitation arises thereunder since there is no bar of limitation to a defence."[12]

When an instrument of transfer of a holding or a portion or share thereof is presented for registration before a Registering Officer, it is incumbent on him to go through the instrument and to see firstly, whether it contains the sale price or the value of the property transferred; and secondly, whether the instrument is accompanied by notices containing the particulars of the transfer in the prescribed form for service to the Revenue-officer. In case of transfer of a portion or share of the holding it is necessary to serve the notice upon all the co-sharer tenants of the holding who are not parties to the transfer. The object of serving notice on the Revenue-officer is to give him an opportunity to know whom he is thenceforward to look for rent and also to make necessary changes in the rent-roll. The object of serving notice to the co-

11. *Nakul v. Kalipada* (1938) 42 C.W.N. 630.
12. *Ibid*, p. 634.

sharer tenants is to give them an opportunity to exercise the right of pre-emption under section 96.

Sub-section (2) lays down that in the case of a testamentary bequest of a holding or a portion or share thereof, no Court shall grant the probate or letters of administration until the applicant files similar notice in the prescribed form giving particulars of the bequest together with the prescribed process fee for transmission of the Revenue-officer.

Sub-section (3) provides that the sale of a holding or a portion or share thereof in execution of a decree or certificate shall not be confirmed by the Court or the Revenue-officer until the purchaser files similar notice and deposits the process fee as that referred to in sub-section (1). Similarly no Court shall make a decree or order absolute for foreclosure of a mortgage of such holding or portion or share thereof, until these conditions are fulfilled. In the absence of notice and process fees a sale confirmed or a decree or order made absolute for foreclosure by the Court, is not, however, a nullity. The Court or the Revenue-officer may simply cancel the confirmation of sale or the decree or order made absolute for foreclosure for such an irregularity.

Sub-section (4) provides that in case of transfer of a portion or share of a holding, the notice giving particulars of the transfer together with the process-fees is to be filed for service upon all the co-sharer tenants of the holding who are not parties to the transfer. Under sub-section (5) the Court, Revenue Authority or Registering Officer, as the case may be, is required to transmit it to the Revenue-officer and to serve it upon the co-sharer tenants by registered post and to affix it in the places as specified in this sub-section.

The first proviso to sub-section (5) contemplates that the service of the notice shall not operate either as an admission of the amount of rent or the area of the holding by the Provincial Government or by any co-sharer tenant on whom the notice is served or as an express consent of that Government or the co-sharer tenant to the division of the holding or to the distribution of the rent payable in respect thereof.

The second proviso to sub-section (5) makes provision for alteration or correction of the rent-roll in case the transfer is subsequently set aside or modified. It lays down that if the transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceedings to which the Revenue-officer was not a party, the authority concerned shall transmit a copy of such order to the Revenue-officer.

Under sub-section 6(*a*) the words "transferee, purchaser, and mortgage" include their successors-in-interest.

90. Limitation of transfer of holding : (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, after the commencement of this Part, be entitled to purchase or otherwise acquire, except in accordance with the provisions of this Part, any quantity of land which added to the total quantity of land already held by him for himself and his family exceeds [three hundred and seventy-five standard *bighas*].[13]

(2) Notwithstanding anything contained in any other law for the time being in force, the holding of a *raiyat* or a share or portion thereof shall not be transferred whether by sale or gift or bequest or otherwise or by sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, except to a *bona fide* clutivator, and any other tenancy or a share or portion thereof shall not be transferred by any such means except to a person, who holds for the time being lands for himself and his family of a total area of less than [three hundred and seventy-five standard *bighas*].[13] and no such transfer shall be valid if, on such transfer, the area of the land so transferred added to the area of land held by the transferee at the time of such transfer exceeds [three hundred and seventy-five standard *bighas*][13]:

Provided that nothing in sub-sections (1) and (2) shall render a transfer to any person invalid in the case where the total area of the land held by such person on such transfer

13. The words "three hundred and seventy-five standard *bighas*" were substituted for the words "one hundred standard *bighas*" by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No.XV of 1961), section 11.

exceeds [three hundred and seventy-fives standard *bighas*],13 if such person has been certified by the prescribed Revenue Authority to be a person who has undertaken large scale farming on a co-operative basis or otherwise by the use of power-driven mechanical appliances and such transfer is limited to the extent specified in the certificate granted by such Revenue Authority.

Provided further that nothing in sub-section (1) or (2) shall apply to the transfer of lands to a person who is *bona fide* carrying on the cultivation of a tea or to a co-operative society or company which is *bona fide* carrying on the cultivation of sugarcane for the purpose of manufacture of sugar by that society or company or to any other company the object of which is to develop industries by the manufacture of commodities.

(3) Notwithstanding anything contained in sub-section (1) or (2), a person who is not a *bona fide* cultivator, may, with the previous written permission of the prescribed Revenue Authority, purchase or otherwise acquire such quantity of land as may be specified in such permission, for occupation and use for commercial or industrial purposes or for charitable or religious purposes.

(4) Notwithstanding anything contained in sub-section (1) or (2), a person who is not a *bona fide* cultivator, may, with the previous written permission of the prescribed Revenue Authority, purchase or otherwise acquire, such quantity of land as may be specified in the permission, for the purpose of constructing a dwelling house for himself and his family or for the purpose of cultivating such land by himself or by the members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars*; and such person shall hold the land so acquired as a tenant under the Provincial Government:

Provided that no such person shall be allowed to hold any area of land in exceess of the limit imposed in sub-section (1):

Provided further that, in case of land acquired by such person for the purpose of constructing a dwelling house for himself or his family, if no dwelling house is constructed on

the land within five years from the date of such acquisition, the right of such person in such land shall be extinguished and the land shall vest in the Provincial Government.

(5) Any transfer of a holding or tenancy or of a share or portion thereof made in contravention of the provisions of this section shall be void, and the lands comprised in the holding or tenancy or share or portion thereof so transferred shall vest absolutely in the Provincial Government free from all encumbrances.

Note : Section 90 puts a limitation on transfer of a *raiyat's* holding. The object of this section is to prevent accumulation of lands in a few hands. Under sub-section (1) no person is entitled to purchase or otherwise acquire any quantity of land which added to the land already held by him exceeds 375 standard *bighas*. When any area of land which has devolved on a person by inheritance added to the total area of land already in his possession exceeds the limit, it shall be lawful for the Provincial Government to acquire the excess land on payment of compensation at the prescribed rate.[14] He will, however, have option to choose the land he is entitled to keep within that limit.[15]

Under sub-section (2) a *raiyat* cannot transfer his holding or a portion or share thereof by sale, gift, bequest or by the execution of a decree or certificate except to a *bona fide* cultivator and to a person who holds less than 375 standard *bighas* for himself or his family. If the transfer is made in contravention of the provisions of this section, the transfer, under sub-section (5), will be void and the land so transferred shall vest absolutely in the Provincial Government free from all encumbrances.

The limitation as to transfer will not, however, apply to a person who has undertaken large scale farming on a cooperative basis or otherwise by the use of power-driven mechancial appliances, provided he has been certified as such

14. Sec. 91.
15. *Ibid.*

by the Revenue Authority. In that case he may purchase land to the extent specified in the certificate.

Similarly the limitation is not applicable in case of transfer of lands to a person who is *bona fide* carrying on the cultivation of tea or to a co-operative society or company which is *bona fide* carrying on the cultivation of sugarcane for the purpose of manufacture of sugar by that society or company or to any other company the object of which is to develop industries by the manufacture of commodities.

Sub-sections (3) and (4) refer to transfers to a person who is not a *bona fide* cultivator. Such a person may, with the previous written permission of the prescribed Revenue Authority, purchase or otherwise acquire such quantity of land as may be specified in the permission, (a) for occupation and use for commercial or industrial purposes or (b) for charitable or religious purposes. He is also allowed under sub-section (4) to purchase or otherwise acquire such quantity of land as may be specified in the permission, (1) for the purpose of constructing a dwelling house for himself and his family or (2) for the purpose of cultivating such land by himself or by the members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars*. But in no case he may be allowed to hold land in excess of the prescribed limit as referred to in sub-section (1). If he acquires the land for the purpose of constructing a dwelling house, he should construct it within five years from the date of acquisition. If he fails to do so within the specified time, his right in that land will be extinguished and it will vest in the Provincial Government.

91. Power of acquiring excess land devolved by inheritance : Notwithstanding anything contained in any other law for the time being in force, when any area of land which has devolved on a person by inheritance added to the total area of land already in his possession exceeds the limit laid down in section 90, it shall be lawful for the Provincial Government to acquire an area of such land, equivalent to

such excess, to be selected according to the choice of such person, on payment of compensation at the rates laid down in sub-section (1) of section 39.

92. Extinguishment of interest of *raiyats* in certain cases :

(1) The interest of a *raiyat* in a holding shall be extinguished —

(a) when he dies intestate leaving no heir entitled to inherit under the law of inheritance to which he is subject;

(b) when he surrenders his holding at the end of any agricultural year by giving notice in the prescribed form and in the prescribed manner and within the prescribed period to the Revenue-officer;

(c) when he voluntarily abandons his residence without making any arrangement for payment of the rent as it falls due and ceases to cultivate his holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars* for a period of three successive years; or—

(d) when such interest has devolved by inheritance, under the law of inheritance to which such *raiyat* is subject, on a person who is not a *bona fide* cultivator and such person has not cultivated the land comprised in the holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars* during the period of five years from the date on which such interest has so devolved on him and there is no sufficient cause why he has not so cultivated the land.

(2) When the interest of a *raiyat* in a holding is extinguished under sub-section (1), the Revenue-officer may enter on the holding; and the holding shall, with effect from the date on which the Revenue-officer so enters on it, vest absolutely in the Provincial Government free from all encumbrances except the encumbrances on the holding which is extinguished under clause *(a)* of the said sub-section, but the persons whose interests in the holdings are extinguished

under clauses *(b)*, *(c)* and *(d)* of that sub-section shall continue to be personally liable for the money secured by the encumbrances on such holdings.

(3) Before entering on a holding under sub-section (2), the Revenue-officer shall cause a notice to be published in the prescribed manner declaring his intention to so enter on the holding and specifying the reasons thereof and also inviting objections from all persons interested in the holding and shall consider any objections that may be submitted to him within the period specified in that behalf in the notice and shall record a decision.

(4) Any person aggrieved by an order passed by the Revenue-officer under sub-section (3) on any objection shown against the extinguishment of the interest of any *raiyat* in his holding under clause *(d)* of sub-section (1) may, instead of filing an appeal under section 147, institute a suit in the Civil Court against such order. Notwithstanding anything contained in any other law for the time being in force, such suit shall be filed within ninety days from the date of the order of the Revenue-officer under sub-section(3). (5) All arrears of rent in respect of a holding remaining due from a *raiyat* whose interest in such holding has been extinguished under sub-section (1) shall be deemed to be irrecoverable.

Note : Section 92 provides how the interest of a *raiyat* in a holding is extinguished. Under sub-section (1) has interest may be extinguished in the following cases:—

(a) when he dies intestate leaving no heir entitled to inherit under the law of inheritance to which he is subject;

(b) when he surrenders his holding at the end of any agricultural year by giving notice in the prescribed form and within the prescribed period to the Revenue-officer;

(c) when he voluntarily abandons his residence without making any arrangement for payment of rent as it falls due and ceases to cultivate his holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars* for a period of three successive years;

(d) when such interest has devolved by inheritance, under the law of inheritance to which such *raiyat* is subject, on a person who is not a *bona fide* cultivator and such person has not cultivated the land comprised in the holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or *bargadars* during the period of five years from the date on which such interest has so devolved on him and there is no sufficient cause why he has not so cultivated the land.

Sub-section (2) of section 93 also speaks of extinguishment of interest of a *raiyat* on sub-letting. It provides that if any holding or any part of it is sublet, the interest of the *raiyat* in the holding or in that part of the holding shall be extinguished.

Under sub-section (2) of section 92 when the interest of a *raiyat* is extinguished the Revenue-officer may enter on the holding and from the date of entry the holding shall vest absolutely in the Provincial Government free from all encumbrances. In cases referred to in clauses *(b)*, *(c)* and *(d)* the *raiyat* will be personally liable for the money secured by the encumbrances on such holdings. But all arrears of rent in respect of the holding remaining due from him shall be deemed to be irrecoverable.

Before entering on a holding the Revenue-officer is required to follow certain proceedure : (1) He shall cause a notice to be published in the prescribed manner declaring his intention to enter on the holding and specifying the reasons thereof; (2) he is to invite objections from all persons interested in the holding; (3) he is to consider the objections, if any, within the period specified in the notice and to record his decision.

Any person, aggrieved by an order of the Revenue-officer on an objection against extinguishment of his interest under clause (d) of sub-section (1) may, instead of filing an appeal under section 147, institute a suit in the Civil Court against such order. The limitation for filing such a suit is 90 days from the date of the order of the Revenue-officer.

93. Restrictions on subletting : (1) No *raiyat* shall sublet the whole or any part of his holding on any terms or conditions whatsoever.

(2) If any holding or any part of holding is sublet in contravention of the provisions of this section, the interest of the *raiyat* in the holding or in that part of the holding shall be extinguished, and the holding or the part of the holdings, as the case may be, shall vest in the Provincial Government from the date of such subletting free from all encumbrances.

94. Transfer of encumbrances in certain cases : Notwithstanding anything contained in any other law for the time being in force, the encumbrances referred to in sub-section (5) of section 90 or sub-section (2) of section 93 shall, with effect from the date of transfer or sub-lease of the lands concerned, be deemed to be transferred and attached to such other lands of the transferor or the lessor as may be selected by the Revenue-officer in accordance with the rules drescribed, and thereupon the encumbrancer shall continue to have the same rights in or against those lands as he had in the original lands before the transfer or sub-lease thereof. The transferor or the lessor, as the case may be, shall also be personally liable for the money secured by such encumbrances.

95. Limitation on mortgage of *raiyati* holdings : (1) Notwithstanding anything contained in any other law for the time being in force, a *raiyat* shall not enter into any form of usufructuary mortgage other than a complete usufructuary mortgage in respect of his holding or of a portion or share thereof, and every such complete usufructuary mortgage shall be subject to the same limitations as are imposed by section 90 on a transfer of the holding of a *raiyat* or of any share or portion thereof; and the period for which such complete usufructuary mortgage may be entered into by any *raiyat* shall not exceed, by any argreement express or implied, fifteen years:

Provided that any such usufructuary mortgage may be redeemed at any time before the expiry of the said period, on payment of an amount which shall bear the same proportion to the total consideration money received by the mortgagor, as the unexpired period bears to the total period for which the mortgage had been entered into.

(2) Every such complete usufructuary mortgage shall be registered under the Registration Act, 1908.

(3) If any usufructuary mortgage entered into by a *raiyat* does not fulfil any of the conditions specified in sub-section (1) or is not registered as required under sub-section (2), it shall be void.

Note : Section 95 puts restriction on transfer by mortgage of a *raiyat's* holding. Under sub-section (1) a *raiyat* cannot enter into any form of usufructuary mortgage except a complete usufructuary mortgage for a period not exceeding 15 years and that too subject to the limitation imposed by section 90. Under sub-section (2) all such mortgages must be effected by a registered instrument. It thus overrides the analogous provisions of section 59 of the Transfer of Property Act, 1882 under which a mortgage for a consideration of less than Rs.100 can be effected by delivery of possession. If any usufructuary mortgage entered into by a *raiyat* does not fulfil any of the conditions sepcified in sub-section (1) or is not registered under sub-section (2), it shall be void.

A usufructuary mortgage can be redeemed at any time before the expiry of the stipulated period on payment of the amount which shall bear the same proportion to the total consideration money received by the mortgagor, as the unexpired period bears to the total period for which the mortgage had been entered into. To explain in a simple manner, the consideration money will be divided by the period of mortgage and the mortgagor can redeem the property on payment of the amount that comes for the unexpired period.

95A. Treatment of Certain Transaction as usufructuary Mortgage.—Notwithstanding anything contained in any other law for the time being in force any transfer of a holding or of portion or share thereof, either by way of an out and out sale with an agreement to reconvey, for where the transferor receives from the transferee any consideration and the transferee acquires the right to possess, and to enjoy the usufruct of such holding or portion or share thereof for a specified period in lieu of such consideration, shall notwithstanding anything contained in the document relating to the transfer, be deemed to be a complete usufructuary mortgage for a period not exceeding seven years and the provisions of section 95 shall apply to such transer whether made before or after the date of commencement of the State Acquisition and Tenancy (Second Amendment) Order, 1972 (President's Order No. 88 of 1972).

[1]**96. Right of Pre-emption.**—(1) If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding, one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 89, or, if no notice has been served under section 89, within two months of the date of the knowledge of the sale, apply to the Court for the said portion or share to be sold to himself or themselves :

Provided that no application under this section shall lie unless the applicant is—

(a) a co-sharer tenant in the holding by inheritance; and

(b) a person to whom sale of the holding or the portion or share thereof, as the case may be, can be made under section 90;

Provided further that no application under this section shall lie after expiry of three years from the date of registration of the sale deed.

(2) In an application under sub-section (1), all other co-sharer tenants by inheritance of the holding and the purchaser shall be made parties.

(3) An application under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court—

1. Section 96, added by the Act No 34 of 2006 deted 20-9-2006

(a) the amount of the consideration money of the sold holding or portion or share of the holding as stated in the notice under section 89 or in the deed of sale, as the case may be;

(b) compensation at the rate of twenty five per centum of the amount referred to in clause (a); and

(c) an amount calculated at the rate of eight per centum simple annual interest upon the amount referred to in clause (a) for the period from the date of the execution of the deed of sale to the date of filing of the application of *preemption.*

(4) On receipt of such application accompanied by such deposits, the Court shall give notice to the purchaser and to the other persons made parties thereto under sub-section (2) to appear within such period as it may fix and shall require the purchaser to state what other sums he has paid in respect of rent since the date of sale and what expenses he has incurred in annulling encumbrances on, or for making any improvement in respect of the holding, portion or share sold.

(5) The Court shall, after giving all the parties an opportunity of being heard after holding an enquiry as to rent paid and the expenses incurred by the purchaser as referred to in sub-section (4), direct the applicant or applicants to deposit a further sum, if necessary, within such period as the Court thinks reasonable.

(6) When an application has been made under sub-section (1), any of the remaining co-sharer tenants may, within the period referred to in sub-section (1) or within two months of the date of the service of the notice of the application under sub-section (4), whichever be earlier, apply to join in the said application; any co-sharer tenant who has not applied either under sub-section (1) or under this sub-section, shall not have any further righ to purchase under this section.

(7) On the expiry of the period within which an application may be made under sub-section (6), the Court shall determine, in accordance with the provisions of this section, which of the applications filed under sub-section (6) shall be allowed.

(8) If the Court finds that an order allowing the applications made under sub-section (7) is to be made in favour of more than one applicant, the Court shall determine the amount to be paid by each of such applicants and, after apportioning the amount, shall order the applicant or applicants who have joined in the original application under sub-section (6) to deposit in the Court the amounts payable by him or them within such period as it thinks reasonable; and if the deposit is not made by any such applicant within such period, his application shall be dismissed.

(9) On the expiry of the period within which a deposit, if any, is to be made under sub-section (8), the Court shall pass orders—

(a) allowing the application or applications made by the applicant or applicants who are entitled to purchase under, and have complied with the provisions of, this section;

(b) apportioning the holding or the portion or share of the holding among them in such manner as it deems equitable when such orders are passed in favour of more than one applicant under sub-section (8);

(c) refunding money to any one if entitled to such refund of any money from the amount deposited by the applicant or applicants under sub-sections (3) and (5);

(d) directing that the purchaser be paid out of the deposits made under sub-sections (3) and (5);

(e) directing the purchaser to execute and register deed or deeds of sale within sixty days in favour of the person or persons whose application or applications have been allowed; and no tax, duty or fee shall be payable for such registration.

(10) If the purchaser fails to execute and register deed or deeds of sale in pursuance of the directions under clause (e) of sub-section (9), within sixty days in favour of the person or persons whose application or applications have been allowed, the court shall execute and present deed or deeds of sale for registration within sixty days thereafter in favour of such person or persons whose application or applications have been allowed.

(11) From the date of the registration of sale deed or deeds under clause (c) of sub-section (9) or under sub-section (10), the right, title and interest in the holding or portion or share thereof accruing to the purchaser from the sale shall, subject to any orders passed under sub-section (9), be deemed to have vested, free from all encumbrances which have been created after the date of sale, in the co-sharer tenant or tenants whose application or applications to purchase have been allowed under sub-section (9).

(12) The Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in him or them.

(13) No apportionment ordered under clause (b) of sub-section (9) shall operate as division of the holding.

(14) An application under this section shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the land in connection with which the application is brought.

(15) An Appeal shall lie to the ordinary Civil Appellate Court from any order of the Court under this section.

(16) Nothing in this section shall be deemed to apply to homestead land.

(17) Nothing in this section shall take away the right of pre-emption conferred on any person by the Mohammadan Law.

(18) Nothing in this section shall apply to any transfer of any portion or share of a holding of a raiyat or any application under section 96 of this Act, made prior to coming into force of the State Acquisition and Tenancy (Amendment) Act, 2006."

Note : Section 96 deals with the right of pre-emption of a co-sharer tenant and a tenant holding land contiguous to the land transferred subject to the limitation of sections 88 and 90. It came into operation on the 14th April, 1956.[17]

The first part of sub-section (1) provides that if a portion or share of a holding of a *raiyat* is transferred, a co-sharer tenant of the holding may apply for transfer of the said

17. *Huzzat Ali v. Imamuddin* (1960) 13 D.L.R. 819.

portion or share of the holding to him. The co-sharer tenant must apply within four months of the service notice given under section 89. If no notice has been served then he may apply within four months of the date of the knowledge of the transfer. If he does not come to the Court within this period his application will be dismissed.[18]

Section 89 provides for serving notice on the co-sharer tenant but there is no provision for serving notice on the tenant holding land contiguous to the land transferred. So it is provided in the second part of sub-section (1) that if a holding or a portion or a share of a holding is transferred, such a tenant may file an application for preemption within four months of the knowledge of such transfer.

According to the proviso to sub-section (1) an application for pre-emption will be granted provided the holding of a co-sharer or the contiguous tenant does not exceed 375 standard *bighas*. It further declares that no co-sharer tenant or tenant holding land contiguous to the land transferred shall have a right to purchase unless he is a person to whom transfer of the holding or the portion or sharer thereof, as the case may be, can be made under section 90[19] .

In the case of *Abul Hossain v. Md. Masim Ali*[20] an important point of law was involved. In this case, during the pendency of the pre-emption proceeding the suit land was reconveyed to the original transferor. It was held by Murshed C.J. that if there is a transfer of a land by a co-sharer the application for pre-emption by another co-sharer cannot be defeated by subsequent re-conveyance of the land by the original co-sharer. In the case of *Mosammat Asimon Nessa v. Md. Akbar Ali*,[21] the learned Chief Justice held that if there has been a sale of several holdings by one transaction and by a single document, a co-sharer has a right in respect of a particular holding covered by the same document and of which he is proved to be a co-sharer. It would be a misnomer to describe it as a partial transaction.

18. *Huzzat Ali v. Imamuddin* (1960) 13 D.L.R. 819.
19. *Satya Ranjan v. Surendra* (1961) 13 D.L.R. 338.
20. (1967) 19 D.L.R. 677.
21. (1967) 19 D.L.R. 659.

Sub-section (2) speaks of the persons who should be made parties in a pre-emption proceeding. It consists of two parts. The first part deals with an application filed under subsection (1) by a co-sharer tenant or tenants in which all other co-sharer tenants of the holding and the transferees are to be made parties.[22] In such a case the tenants holding lands contiguous to the land transferred do not appear to be necessary parties.[23] The second part deals with an application filed by a tenant or tenants holding land contiguous to the land transferred. In that case all co-sharer tenants of the holding and all the tenants holding land contiguous to the land transferred and the transferees are to be made parties.[24] The seller is not a necessary party.[25]

In the case of *Syed Abdul Karim v. Harendra*,[26] Chowdhury C.J. and M. R. Khan J. held that the provisions of section 96 that all the co-sharer tenants of the holding and all the tenants holding land contiguous to the land transferred shall be made parties, are mandatory and not directory; because the cause of action for pre-emption of any transfer accrues to those who are entitled to file an application for pre-emption and against the transferee, but this right of the applicant or applicants is not absolute, but subject to the right of other co-sharers and other holders of land contiguous to the land transferred, as the case may be. So in order to get relief in the shape of pre-emption by the applicant, the other interested persons must be impleaded to enable the Court to adjudicate the claim of the respective parties completely, and relief cannot be given in the absence of any such party. The

22. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847; *Raji Wahab Ali v. Kadam Ali* (1962) 14 D.L.R. 204.
23. *Raji Wahab Ali v. Kadam Ali* (1962) 14 D.L.R. 204.
24. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847; *Raji Wahab Ali v. Kadam Ali* (1962) 14 D.L.R. 204; *Makhanlal v. Reajuddin* (1960) 13 D.L.R. 323.
25. *Seferaddi Munshi v. Farman Ali* (1952) 4 D.L.R. 621.
26. (1961) 14 D.L.R. 847.

principle embodied in Order 1, Rule 9[27] of the Civil Procedure Code, 1908 seems to have no application.[28]

It cannot be said that the tenants holding lands contiguous to the land transferred are not necessary parties as they are persons whose presence is necessary for the proper constitution of the pre-emption application. Their presence is not only a matter of convenience but of absolute necessity to enable the Court to adjudicate more effectively and completely.[29] Order 1, Rule 9 of the Code does not apply when a cause of action arises against a number of persons jointly because when one of such persons is eliminated no cuase of action subsists against other as in the suit for partition.[30] In the case of pre-emption under section 96 of the Act, the cause of action arises not only against the transferee but also against the co-sharer and other holders of contiguous lands. There is not distinction between an application for preemption by a tenant holding land contiguous to the land transferred and an application by a co-sharer tenant except in that in the case of an applidcation by a tenant holding land contiguous to the land transferred he cannot maintain his application without impleading all the co-sharer tenants, though in the case of an application by a co-sharer, it can be maintained without impleading the holder of land contiguous to the land transferred because of the priority of the co-sharer tenant over the tenant holding land contiguous to the land transferred.[31] As regards the persons who should be impleaded as parties in an application for pre-emption under section 96, the position may be summarised thus[32] :—

27. Order 1, Rule 9 of the Civil Procedure Code runs as follows :— "No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."
28. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847.
29. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847.
30. *Ibid.*
31. *Ibid.*
32. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847; See also *Raji Wahab Ali v. Kadam Ali* (1962) 14 D.L.R. 204; *Makhanlal v. Reajuddin* (1960) 13 D.L.R. 323.

(1) In the case of an application by a co-sharer by inheritance all other co-sharers by inheritance are to be impleaded;

(2) In the case of an application by a co-sharer by purchase all other co-sharers whether by inheritance or purchase are to be impleaded;

(3) In the case of an application by a holder of land contiguous to the land transferred, all co-sharer tenants, either by inheritance or by purchase, as well as other holders of land contiguous to the land transferred must be impleaded.

One contiguous holder need not necessarily be contiguous holder in respect of all lands transferred. The section nowhere says that the applicant must be contiguous to all the lands or plots of land transferred, particularly, in view of the constitution of holding in this part of the country which generally does not form a compact block but consists of different parcels of land scattered over a field or fields in one or more villages. The legislature could not have intended that contiguous holder on whom right of pre-emption has been given should have continuity in respect of all the lands sold.[33]

Clause (a) of sub-section (3) requires that an application for pre-emption must be accompanied by a deposit of the entire consideration money of the property transferred as stated in the notice served under section 89, together with compensation at the rate of 10 *per cent* thereon. The deposit is a condition precedent to the application being entertained and its non-fulfilment will render the application liable to be summarily dismissed. The right of pre-emption is not an indefeasible right. If during the pendency of the proceeding the pre-emptor ceases to be a co-sharer the right is lost.[34] In order to maintain a claim for pre-emption, the pre-emptor should have an interest in the holding as a co-sharer tenant not only at the time of filing of the application for pre-emption but also throughout the proceedings.[35]Partial pre-

33. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847.
34. *Mamijannessa v. Tazaruddin* (1961) 14 D.L.R. 572.
35. *Lakhi Kanta v. Sunil* (1964) 17 D.L.R. 327.

emption is not permissible in law.[36] Where lands of two different holdings are transferred by a single document and the applicants are co-sharers in one of the holdings and they deposit the proportionate amount which are equal to the share claimed by them, it was held[37] that such a deposit is valid and they are not required to deposit the entire consideration money.

Clause (b) of sub-section (3) lays down the procedure to be followed by the Court when the deposit as required by clause (a) is made. It provides that if such a deposit is made, the Court will give notice to the transferee and other persons who are made parties in the proceeding to appear on a fixed date and to state the consideration money actually paid for the transfer and to state what other sums he has paid in respect of rent and what expenses he has incurred in annulling encumbrances or for making any improvement on the transferred property since the date of the transfer. After considering these points and after giving hearing to all the parties the Court will direct the applicant or applicants to deposit the aforesaid amount paid by the transferee within the period allowed by the Court.

Sub-section (4) gives the remaining co-sharer tenants and others an opportunity to join as co-applicants in the pre-emption proceeding. It provides that when an application has been made under sub-section (1) any of the remaining co-sharer tenants including the transferee and the tenants holding land contiguous to the land transferred may within the period referred to in sub-section (1) or within 2 months of the date of the service of the notice of the application under clause (b) of sub-section (3), whichever be earlier, apply to join in the application for pre-emption. But those who will not apply eithe: under sub-section (1) or under sub-section (4) shall not have any further right to purchase under this section.[38]

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36. *Abdul Kader v. Md. Seraj Khan* (1964) 17 D.L.R. 565; *Salimuddin v. Mohitosh* (1962) 14 D.L.R. 796; *Syed Abdul Karim v. Harendra* (1961) 14 D.L .R. 847; *Makhanlal v. Reajuddin* (1960) 13 D.L.R. 323; *Babul v. Sm. Laljan* (1956) 10 D.L.R. 54.
37. *Brojendra v. Debendra* (1965) 17 D.L.R. 618.
38. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847.

In the case of *Raji Wahab Ali v. Kadam Ali*[39] a question was raised as to whether it should be the date of knowledge of the applicant under sub-section (1) of section 96 of the Act or it should be the date of knowledge of the co-sharer tenant who wants to join as a co-applicant for the purpose of rateable pre-emption under sub-section (4) of the Act. It was held that although the language as employed in sub-section (4) does not make it very clear, yet upon a reasonbale construction of the language employed therein the relevant knowledge must be of the party who wants to join as a co-applicant for rateable pre-emption by virtue of sub-section (4) of the Act and not the knowledge of the original applicant who comes under sub-section (1) of the Act.

In a pre-emption proceeding under this section, on the question of addition of parties the provisions of Order 1, Rule 10 of the Civil Procedure Code, 1908 shall be applicable.[40] Therefore where a co-sharer who was not impleaded as a party when the application for pre-emption was originally made but was added as a party under the Couet's order he could not be deemed to be a party prior to the date of the Court's order.[41] When one is impleaded as a party after the expiry of the period of limitation, it does not extend the time.[42]

The fact that service of notice was served on a natural guardian of the minor cannot entitle the applicants for pre-emption to treat such a guardian as a co-sharer tenant with effect from the date of the application where the guardian being himself a co-sharer was not impleaded as a co-sharer in the pre-emption proceeding.[43]

Sub-section (5) gives priority first to (1) the co-sharer tenant whose interest has accrued by inheritance, then to (2) a co-sharer tenant whose interest has accrued by purchase, and lastly to (3) tenant or tenants holding land contiguous to the land transferred. First class excludes both the second and the third class, and the second excludes the third. If more than

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39. (1962) 14 D.L.R. 204.
40. *Raji Wahab Ali v. Kadam Ali* (1962) 14 D.L.R. 204.
41. *Ibid.*
42. *Syed Abdul Karim v. Harendra* (1961) 14 D.L.R. 847.
43. *Raji Wahab Ali v. Kadam Ali* (1962) 14 D.L.R. 204.

one tenant holding land contiguous to the land transferred apply for pre-emption, the Court shall determine the order of priority among such tenants having regard to the circumstances mentioned in clause (b) of this sub-section.

Under sub-section (6) the Court is to determine which of the applications should be allowed. If it finds that an order for pre-emption is to be made in favour of more than one applicant, it shall determine and apportion the amount to be paid by each of such applicants. Then they will be ordered to deposit the amount payable by them within the period fixed by the Court. If the deposit is not made by any of the applicants within that period, his application shall be dismissed.

Sub-section (7) provides that when orders for pre-emption are passed in favour of more than one applicant, the Court will apportion the holding or the portion or share of the holding among them in such manner as it deems equitable. But it will not operate as a division of the holding. The applicant or applicants under sub-section (1) who are entitled to get refund of any money shall get it from the amount deposited by the applicant or applicants under clause (b) of sub-section (6). Under clause (b) of sub-section (7) the transferee will get (1) the amount of consideration money paid by him for the transfer together with compensation at the rate of 10 *per centum* of such amount, (2) the amount, if any, paid by him on account of rent of the transferred porperty since the date of transfer and (3) the amount of expenses, if any, incurred by him in annulling encumbrances and (4) for making any improvement on the property.

Sub-section (9) provides that from the date of the order allowing pre-emption under sub-section (7) the right, title and interest in the holding or portion or share thereof accruing to the transferee from the transfer shall be deemed to have vested, free from all encumbrances which have been created after the date of transfer, in the person or persons whose applications to purchase have been allowed. The liability of the transferee for the rent of the property from the date of the transfer shall cease and such persons will be liable for the rent due from the transferee. On further applications the Court may place them in possession of the property.

According to sub-section (10) the right of pre-emption is not available in the following cases :—

(1) Transfer to a co-sharer in the tenancy whose interest has accrued otherwise than by purchase, that is, where the transferee is one of the original co-tenants.

(2) Transfer by exchange or partition. Exchange and partition are not transfers within the meaning of section 88 (5) and section 89 (6) (b) respectively and cannot therefore give rise to the right of pre-emption.

(3) Transfer by bequest or gift (including *heba* but excluding *heba-bil-ewaj* for any pecuniary consideration) in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of the testator or donor. But if the transfer is made by way of *heba-bil-ewaj* for a pecuniary consideration, pre-emption will lie, for such a transaction is practically a sale[44] and not a provision for near relations which is excepted for obvious reasons.

(4) Simple or complete usufructuary mortgage or, until a decree or order absolute for foreclosure is made, a mortgage by conditional sale. Such mortgages are not transfers within the meaning of sections 88 and 89. The result is that there is no right of pre-emption when the mortgage is executed. But when the mortgagee gets a decree or order absolute for foreclosure of a mortgage he must serve notice under section 89 (4) on the co-sharer tenants of the holding and thereupon the latter may apply for pre-emption.

(5) Transfer by way of *wakf*. It must be valid under the provisions of the Muslim Law.

(6) Dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual, *e.g.*, a public charitable trust.

Sub-section (11) saves the Muslim Law of pre-emption from the operation of this section. If there is any rare case of competition between the right given by the Muslim law and the right created by statute in this section, the right under the former will prevail. Thus if one co-tenant electes to bring an

44. *Satyendra v. Fulsom* (1932) 36 C.W.N. 486=139 I.C.403.

application under this section and another brings a suit under the Muslim law, and neither joins with the other, the application under section 96 should not be disposed of without first hearing the suit under the Muslim law or both should be heard together, and if the plaintiff in the suit succeeds on merits, the application under section 96 should be dismissed.

Under sub-section (12) an application for pre-emption will be filed in the Court which has jurisdiction to entertain a suit for possession of the land in connection with which the application is brought.

Sub-section (13) provides a right of appeal from an order made on an application for pre-emption under this section. But there is only one appeal from an order granting or rejecting an application for pre-emption under this section, there being no second appeal to the High Court from the appellate order. The appellate order is, however, open to revision by the High Court under section 115 of the Civil Procedure Code, 1908.

Right of pre-emption being attached to the land, vendee takes subject to this right : Right of pre-emption is not a mere personal right but an incident annexed to the land.[45] The entire land is clogged with an encumbrance in the shape of the right of pre-emption. The vendor possesses the property not absolutely, but subject to the right of pre-emption. The vendee thus purchases the property, not as a whole but free from all liabilities, but as one impressed with a particular quality or incident.[46]

When the right of pre-emption subsists : A pre-emptor must have a subsisting right of pre-emption on —(1) the date of the sale, (2) the date of the institution of the suit and (3) the date of the decree. If a claimant ceases to have the right of pre-emption at any of these points of time, his claim is bound to fail.

Whether pre-emption involves a sale : The exercise of the right of pre-emption does not involve a sale by the transferee

45. *Audh Behari v. Gajadhar*, A.I.R. 1954 S.C. 417.
46. *Sheo Kumar v. Sudama Devi*, A.I.R. 1962 Pat. (Vol.49) 125 F.B. and the cases noted therein.

to the applicant.[47] In the Full Bench of the Allahabad High Court in the cases of *Gobind Dayal v. Inayatullah* and *Brij Mohan Lal v. Abdul Hasan Khan*,[48] Mahmood J. defined the right of pre-emption as "a right which the owner of certain immovable property possesses, as such, for the quite enjoyment of that immovable property, to obtain, in substitution for the buyer, proprietary possession of certain other immovable property, not his own, on such terms as those on which such latter immovable property is sold to another person." In another place the learned Judge observed that the right of pre-emption is nothing but "a right of substitution, entitling the pre-emptor, by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title."

Mahmood J., was cited with approval by the Judicial Committee of the Privy Council in the case of *Deonondan Prashad Singh v. Ramdhari Chowdhury*[49] and that Committee approved the definition of pre-emption given by his Lordship to the effect that it is really a substitution of ownership in respect of the pre-empted property. This view has been reiterated by Murshed J. (afterwards C.J.) in the case of *Md. Basiruddin Mandal v. Annamoni*[50] in the following terms:— "It would be incorrect to describe it as a re-sale by the transferee to the co-sharer applicant. It is not a re-purchase of the property from either the vendor or the vendee. It is a right to acquire the property at the same price as given by the transferee." It is now evident that the right of pre-emption does not involve "a sale" by the transferee. It is really a substitution of ownership in respect of the pre-empted property. Though this conclusion was arrived at in connection with the law of pre-emption under section 26F of the Bengal Tenancy Act, 1885, yet the principle is applicable to section 96 of the present Act inasmuch as the right of pre-

47. *Md. Basiruddin Mandal v. Annamoni* (1960) 12 D.L.R. 737 and the cases noted therein.
48. I.L.R. 7 All. 775.
49. 21 C.W.N. 786 P.C.=A.I..R. 1916 P.C. 179.
50. (1960) 12 D.L.R. 737.

emption of a co-sharer has been re-enacted in the latter section with certain modifications.

97. Restriction on alienation of land by aboriginals : (1) The Provincial Government may from time to time, by notification, declare that the provisions of this section shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this section, and the publication of such notification shall be conclusive evidence that the provisions of this section have been duly applied to such castes or tribes, namely :—

Sonthals, Bhuiyas, Bhumijes, Dalus, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Maches, Mundas, Mundais, Oraons and Turis.

(2) Except as provided in this section, no transfer by an aboriginal *raiyat* of his right in his holding or in any portion thereof shall be valid unless it is made to another aboriginal domiciled or permanently residing in [East Pakistan][51] who is a person to whom the transfer of such holding or portion thereof can be made [under sections 88 and 90.][52]

(3) If in any case an aboriginal *raiyat* desires to transfer holding or any portion thereof by private sale, gift or will to any person who is not such an aboriginal, he may apply to the Revenue-officer for permission in that behalf and the Revenue-officer may pass such order on the application as he thinks fit [having regard to the provisions of sections 88 and 90].[53]

51. The words within square brackets were substituted for the words "East Bengal" by the East Pakistan Repealing and Amending Ordinance, 1960 (E.P.Ord. XXVIII of 1960), First Schedule.
52. The words and figures "under sections 88 and 90" were substituted for the figures and words "under section 90" by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P.Ord. No.XV of 1961), section 13.
53. The words and figures "having regard to the provisions of sections 88 and 90" were inserted by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No.XV of1961), section 13.

(4) Every transfer referred to in sub-section (3) shall be made by registered deed; and before the deed is registered and the holding or any portion thereof is transferred, the written consent of the Revenue-officer shall be obtained to the terms of the deed and to the transfer.

(5) An aboriginal *raiyat's* power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage :

Provided[54] that nothing in this sub-section shall apply to a mortgage to Government or to the Agricultural Development Bank of Pakistan or to the East Pakistan Agricultural Development Corporation or to a Co-operative Society for obtaining loans for agricultural purposes.

(6) An aboriginal *raiyat* may enter with another aboriginal, domiciled or permanently residing in [East Pakistan],[55] who is a person with whom a complete usufructuary mortgage can be entered into under sub-section (1) of section 95, into a complete usufructuary mortgage in respect of any land comprised within his holding for any period which does not and cannot, in any possible event, by any agreement express or implied, exceed seven years :

Provided that every mortgage so entered into shall be registered under the Registration Act, 1908.

(7) Any transfer made by an aboriginal *raiyat* in contravention of the provisions of this section shall be void.

(8) *(a)* If a transfer of a holding or any portion thereof is made by an aboriginal *raiyat* in contravention of the provisions of this section, the Revenue-officer may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such holding or portion :

Provided that the transferee shall be given an opportunity of showing cause against such ejectment before the order is passed.

54. This proviso was added by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No.VIII of 1967), section 9.
55. The words within square brackets were substituted for the words "East Bengal" by the East Pakistan Repealing and Amending Odinance, 1960 (E.P. Ord. XXVIII of 1960), First Schedule.

(b) When the Revenue-officer has passed any order under clause (a) he shall either (i) restore the transferred land to the aboriginal or his heir or legal representative or, (ii) failing the transferor or his heir or legal representative, declare that the land has vested in the Provincial Government and the Revenue-officer may settle the land with another aboriginal.

(9) Notwithstanding anything contained in any other law for the time being in force, no decree or order shall be passed by any Court for the sale of the right of any aboriginal *raiyat* in his holding or any portion thereof, nor shall any such right be sold in execution of any decree or order:

Provided that any holding belonging to an aboriginal may be sold, according to the provisions of this Act, in execution of a certificate for the recovery of the arrears of rent of the holding [or for recovery of any loan advanced for agricultural purposes by Government or the Agricultural Development Bank of Pakistan or the East Pakistan Agricultural Development Corporation or a Co-operative Society to an aboriginal on the security of his holding.][56]

(10) The Provincial Government may, by notification, declare that this section shall, in any district or local area, cease to apply to any caste or tribe to which it may have been applied under sub-section (1).

CHAPTER –XIV

Provisions as to enhancement and reduction of rent.

[Chapter XIV deals with enhancement and reduction of rent of a *raiyat* and a non-agricultural tenant. Section 99 empowers the Provincial Government of direct the Revenue-officer to determine the rent-rates for any district or part of a district or local area and the prepare a settlement rent-roll in which the rent so settled shall be specifed. Section 100 speaks of the procedure in determining rent-rates. Under section 101 the Revenue-officer shall prepare the preliminary and final publication of the table of rent-rates and it will be confirmed by the superior Revenue authority. Under section 102 the rate of rent shown in a table of rent-rates shall be the maximum rate at which the rent of a *raiyat* or a non-agricultural tenant can be settled. Under section 103 certain particulars as referred to in sub-sections (2) and (4) of section 100 shall form part of the record-of-rights. Under section 104 when the rent-rates are determined, it will not be changed for a period of 20 years.

Sections 105 and 106 specify the grounds of enhancement and reduction of rent. Under section 107 the Revenue-officer is to settle the fair and equitable rents of all tenants and to prepare the settlement rent-roll after a table of rent-rates has been prepared and confirmed. Sections 108 and 109 deal with preliminary and final publication of the settlement rent-roll and the incorporation of such roll in the record-of-rights. The aggrieved party may prefer an appeal under section 110 and 111 to the superior Revenue authority and then to the special Judge. Section 112 provides that the rents settled under this Chapter shall be deemed to have been correctly settled and to be fair and equitable. Under section 113 it will take effect from the beginning of the agricultural year next after the date of the final publication of the settlement rent-roll. According to section 114 the rent so settled shall not be enhanced for a period of 20 years and no such rent shall be reduced within the said period save on the grounds specified in clause (b) or clasue (c) of section 106. Section 115 ousts the jurisdiction of the Civil Court in respect of determination of rent-rates or the settlement of any rent or the omissions to determine any rent-rate or to settle any rent under this Chapter except as provided in section 111.]

98.[1] **Revision of rents of *raiyats* and non-agricultural tenants :** The rent of a raiyat or non-agricultural tenant shall not be enhanced, reduced or altered except as provided in this Chapter.

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56. The words within square brackets were added by the E.B. State Acquisition and Tenancy (Amendment) ordinance of 1967 (E.P.Ord. No.VIII of 1967), section 9.

1. This section was substituted for the original section by the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P.Ord. No.VIII of 1967) section 10.

98A. Assessment or Re-Assessment of Rent In Certain Cases.—(1) Notwithstanding anything contained elsewhere in this Act, it shall be lawful for he Deputy commissioner to assess or re-assess rent on land in the following cases, namely:

(a) where any land held by a raiyat or non-agricultural tenant has not been assessed to any rent under Chapter IV or section 144, nor has any rent been settled in respect of such land under section 107;

or

(b) where any land assessed to rent as agricultural land under any of the provisions mentioned in case (a), is subsequently used for a non-agricultural purpose or vice versa.

(2) In assessing or re-assessing any rent under sub-section (1), the Deputy Commissioner shall have regard to the principles laid down in section 26 :

Provided that the Deputy Commissioner shall not take action under this section in any area where preparation or revision of record-of-rights has been undertaken under section 144;

Provided further that no assessment or re-assessment of rent shall be made under this section unless not less than fifteen days notice has been given to the raiyat or tenant concerned to appear and be heard in the matter.

(3) Where only a part of a holding is used for a non-agricultural purpose, such protion shall be constituted into a separate tenancy on the principles laid down in sub-section (3) of section 107 as far as applicable and assessment or re-assessment of rent thereof made under this section.

99. Order for determination of rent-rates and preparation of settlement rent-roll : (1) The Provincial Government may make an order directing the Revenue-officer—

(a) to determine the rent-rates for any district or part of a district or local area in accordance with the provision of the Chapter and of such rules as may be made in this behalf by the Provincial Government and to prepare in the prescribed form and manner a table of rent-rates in which the rent-rate so determined, together with such other particulars as may be prescribed, shall be specified; and

(b) after the table of rent-rates in respect of any district, part of a district or local area has been prepared and confirmed under this Chapter, to settle fair and equitable rents for all tenants in such district or part or area and to prepare in the prescribed form and manner a settlement rent-roll in which the rents so settled, together with such other particulars as may be prescribed, shall be specified.

(2) A notification in the *Official Gazette* of an order under this section shall be conclusive evidence that the order has been duly made.

100. Procedure in determining rent-rates : (1) When an order is made under clause *(a)* of sub-section (1) or section 99, the Revenue-officer shall, for the purpose of determining the rent-rates for the area specified in such order, divide such area into as many suitable units of area as he considers necessary having regard to the conditions of the land and, [if such area be agricultural area][2] the [* * *][3] crops grown in such area, and the Revenue-officer shall then determine the rent-rates for different classes of lands in each such unit.

(2) In determining the rent-rates [for different classes of agricultural land][4] under sub-section (1), the Revenue-officer shall take into consideration—

(a) the nature of the soil and the general productivity of the class of land for which the rent-rate is being determined;

(b) the normal yield per acre of the land to be determined in the prescribed manner;

2. The words within square brackets were inserted by the East Bengal State Acqusition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 11.
3. The word "Principal" was omitted by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No. XV of 1961), section 14.
4. The words within square brackets were substituted for the words "for different classes of land" by the E.B. State Acqusition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 11.

(c) the average prices of the crops grown on such land calculated on the basis of the average prices of such crop prevailing during the preceding twenty years excluding the years in which such prices were abnormal;

(d) any means of irrigation or drainage or any other special facilities for cultivation of such land;

(e) the result of any work of agricultural improvement effected within any particular unit at the expense of Government [* * *][5]

(f) * * * *[6]

(3) The rate of rent per acre for [any class of agricultural land][7] determin under sub-section (1) shall not exceed one-tenth of the total value of the produce per acre of such land obtained by multiplying the normal yield per acre of such land, determined in the manner prescribed, by the average price of crops grown in such land referred to in clause (e) of sub-section (2) [* * *].[8]

[(4) In determining the rate of rent for different classes of non-agricultural land under sub-section (1), the Revenue-officer shall take into consideration—

(a) the rent generally paid to the Provincial Government for non-agricultural land with similar advantages or of a similar description in the vicinity,

(b) the market value of the land or of similar land in the vicinity immediately before the publication of the notification under section 99, to be detrmined in the prescribed manner,

5. The full-stop was substituted for the semi-colon and the word "and" was omitted by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No. XV of 1961), section 14.
6. Clause (f) was omitted, *ibid.*
7. The words within square brackets was substituted for the words "any class of land" by the E.B. State Acquisition and Tenancy (Amendment) Ordiance, 1967 (E.P. Ord. No. VIII of 1967), section 11.
8. The words and commas "or five-fourth of the existing rate of rent or the average rate of rent, determined in the prescribed manner, of such land, whichever is less" were omitted, by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.B. Ord. No. XV of 1961), section 14.

(c) special conditions and incidents, if any, of the tenancy, and

(d) the result of any work of improvement effected within any particular unit at the expense of Government:

Provided that the rate of rent per acre for any class of non-agricultural land determined under sub-section (i) shall not exceed one-fourth *per centum* of such market value in the case of a residential area and half *per centum* of such market value in the case of any other area.

(5) The rent generally paid for similar land in the vicinity, as referred to in clause (a) of sub-section (4), shall be calculated by adding up the existing rents of such land in the unit and dividing the sum total by the total area of such unit.

Explanation.— For the purpose of this section, "land" does not include any building or structure standing thereon.][9]

101. Preliminary and final publication of table of rent-rates and its confirmation by the prescribed superior Revenue Authority : (1) When the Revenue-officer has prepared a table of rent-rates, he shall cause a draft of it to be published in the prescribed manner and for the prescribed period in the area or village to which it relates.

(2) Any person objecting to any entry in the table of rent-rates may present a petition to the Revenue-officer within thirty days from the first date of publication under sub-section (1), and the Revenue-officer shall consider any such objection and may alter or amend the table.

(3) If no objection is made within the said period or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the prescribed Revenue Authority with a full statement of the grounds for his proposal together with all the necessary particulars [* * *][10] and the existing rent-rates for each class of land and a summary of the objections (if any) which he has received.

9. Sub-section (4) and (5) and the Explanation were added by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P.Ord. No. VIII of 1967), section 11.
10. The words "relating to the value of the produce per acre of land" were omitted by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 12.

(4) Such superior Revenue Authority may confirm a table submitted under sub-section (3), with or without modification, or may return it for revision.

(5) When a table of rent-rates has been confirmed by such superior Revenue Authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the table have been duly conducted in accordance with this Act, and it may be presumed that the rates shown in the table for each class of land are fair and equitable rates payable for land of that class within the area to which the table applies.

102. Rate shown in the table to be the maximum rate : The rate of rent for any class of land shown in a table of rent-rates confirmed under section 101 shall be the maximum rate at which the rent of a *raiyat* [or non-agricultural tenant][11] for such class of land can be settled.

103.[12] Particulars to form parts of record-of-rights : The particulars referred to in sub-section (2) and (4) of section 100 in respect of a unit and the rates of rent determined for different classes of land within such unit under this Chapter shall form part of the record-of-rights of such unit maintained under this part.

104. Duration of rent-rates : When the rent-rates for any district, part of a district or unit of area have been determined under this Chapter and shown in a table of rent-rates confirmed under section 101, they shall not be changed until after a period of [twenty][13] years has elapsed from the date of such confirmation.

105. Grounds of and limits to enhancement of rent : (1) The rent paybale by a *raiyat* [or non-agricultural tenant][14] in respect of any land shall be liable to enhancement on the ground that the rent payable by him is substantially lower than the rent calculated at the rates of rent determined under this Chapter for similar classes of land in the unit in which the land is situated and entered in the table of rent-rates, confirmed under section 101, applicable to such unit.

[(2) In all cases where the increase of rent exceeds fifty *per centum* of the rent payable during the immediately preceding year, the Revenue-officer shall, and in any other cases where he considers that an immediate increase of rent will cause hardship, he may direct that the enhancement shall take effect by yearly increments over a number of years as he may fix in this behalf:

Provided that the increase of rent in a particular year shall not exceed fifty *per centum* of the rent payable during the year immediately preceding the year from which the new assessment takes effect under section 113.][15]

106. Grounds for reduction of rent : The rent payable by a *raiyat* in respect of a holding may be reduced on one or more of the following grounds, namely:—

(a) that the rent payable by the *raiyat* is substantially higher than the rent calculated at the rates of rent determined under this Chapter for similar classes of land in the unit in which the land comprised in the holding is situated and entered in the table of rent-rates, confirmed under section 101, applicable to such unit;

(b) that the soil of the holding has deteriorated as a result of the deposit of sand or through the operation of other natural causes, sudden or gradual; and

(c) that there has been any breakdown of the existing arrangements for irrigation or drainage or for the maintenance of any embankments or bunds which

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11. The words within square brackets were inserted, *Ibid*, section 13.
12. This section was substituted for the former section by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967) section 14.
13. The word "twenty" was substituted for the word "thirty" by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No.XV of 1961), section 16.
14. The words within square brackets were inserted by the E. B. State Acqusition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 15.

15. Sub-section (2) of section 105 was substituted for the original sub-section (2) by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. XV of 1961), section 17. The original sub-section read as follows :—
"(2) If the Revenue-officer considers that an immediate increase of rent will cause hardship, he may direct that the enhancement shall take effect by yearly increments extending over a period not exceeding five as the Revenue-officer may fix in this behalf."

were in existence at the time when the rent was last settled, and the soil of the holding has thereby deteriorated.

106A.[16] Grounds for reduction of rent : The rent payable by a non-agricultural tenant in respect of any tenancy may be reduced on the ground that the rent payable by him is substantially higher than the rent calculated at the rates of rent determined under this Chapter for similar classes of land in the unit in which the land comprised in the tenancy is situated and entered in the table of rent-rates, confirmed under section 101, applicable to such unit.

107. Settlement of fair and equitable rents : (1) After a table of rent-rates has been prepared and confirmed under this Chapter, the Revenue-officer shall proceed to settle, according to the provisions of the preceding sections, the fair and equitable rents of all tenants in the area to which the table of rent-rates applies and to prepare the settlement rent-roll as directed under clause *(b)* of sub-section (1) of section 99.

(2) For the purpose of settling such fair and equitable rents and preparing the settlement ren-roll, the Revenue-officer shall be guided by the rent-rates entered in the tbale or rent-rates so prepared and confirmed :

Provided that a Revenue-officer shall not be bound to apply the said rates to any particular case or area if he considers, for reasons to be recorded in writing, that the application of such rates to such case or area would be unfair or inequitable.

(3)[17] Where any agricultural land is comprised in a tenancy which includes land other than non-agricultural land, or when the classfication of land has partly changed from agricultural to non-agricultural, the Revenue-officer shall,—

(i) divide the tenancy so as to constitute separate tenancies for the non-agricultural land and the agricultural land,

16. Section 106A was inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 16.
17. Sub-section (3) was added by the E.B. State Acquisition and Tenancy (Amendment) Oridnance, 1967 (E.P. Ord. No. VIII of 1967), section 17.

(ii) apportion the existing rent between the tenancy so constituted,

(iii) estimate fair and equitable rents for the agricultural and non-agricultural land in accordance with the provisions of this Chapter, and

(iv) make such consequential changes in the record-of-rights as may be necessary.

108. Preliminary publication and amendment of settlement rent-roll : (1) When a settlement rent-roll has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objection made to an entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Provincial Government may make.

(2) The Revenue-officer may, of his own motion or on application of any party aggrieved, at any time before a settlement rent-roll is submitted to the confirming authority under section 109, revise any rent entered therein:

Provided that no such entries shall be revised until reasonable notice has been given to the tenant concerned to appear and be heard in the matter.

109. Sanctioning and final publication of the settlement rent-roll and incorporation of the same in the record-of-rights : (1) When all objections have been disposed of under section 108, the Revenue-officer shall submit the settlement rent-roll to the prescribed confirming authority with a full statement of the grounds for his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the settlement rent-roll with or without amendment or may return it for revision :

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the tenant concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority the Revenue-officer shall finally frame the settlement rent-roll and publish it in such manner as may be prescribed and shall incorporate it in the record-of-rights for the area, to which

such settlement rent-roll relates, maintained under this Part; and such publication shall be conclusive evidence that the settlement rent-roll has been duly made under this Chapter.

110. Appeal to and revision by superior Revenue Authority : (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer on any objection made under section 108, or from an order passed by the confirming authority under section 109 to the prescribed superior Revenue Authority.

(2) The Board of Revenue may in any case under this Chapter, on application or of its own motion, direct the revision of any settlement rent-roll or any portion of it at any time within six months of the date of the order sanctioning the settlement rent-roll under sub-section (2) of section 109 or any order passed by the superior Revenue Authority under sub-section (1), whichever is later, but not so as to affect any order passed by the Special Judge under section 111:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

111. Appeal to the Special Judge : (1) Any person aggrieved by an order passed by the Revenue-officer on any objection made under section 108 or an order passed by the confirming authority under section 109, may present an appeal in the prescribed manner against such order, within three months of the final publication under sub-section (3) of section 109 of the settlement rent-roll to which such appeal relates, to the Special Judge appointed by the Provincial Government in this behalf provided that no appeal has been presented regarding the matter to the prescribed superior Revenue Authority under sub-section (1) of section 110.

(2) Subject to such orders as may be passed by the High Court in its revisional jurisdiction, the order of the Special Judge, on the appeal, shall be final; and no appeal shall lie to the High Court against the order of the Special Judge under this section.

(3) The provisions of the Code of Civil Procedure, 1908, shall, so far as it may be, apply to all appeals presented to the Special Judge under this section.

111A.[18] **Correction of mistakes and making alteration in rent-roll :** The Revenue-officer, may, at any time before final publication under sub-section (3) of section 109, correct any clerical mistake in the settlement rent-roll, and shall make such alteration in the same as may be necessary to give effect to any order passed under section 110 and 111.

112. Presumption as to rents settled under this Chapter : All rents settled under this Chapter shall be deemed to have been correctly settled and to be fair and equitable rents.

113. Date from which settlement takes effect : When a rent is settled by a Revenue-officer under this Chapter in respect of any area, it shall, subject to sections 110 and 111, take effect from the beginning of the agricultural year next after the date of the final publication under sub-section (3) of section 109 of the settlement rent-roll in which such rent is specified.

114. Period for which rent as settled is to remain unaltered : When the rent of a tenant has been settled under this Chapter, it shall not be enhanced for a period of [twenty][19] years; and no such rent shall be reduced within the said period save on the ground specified in clause *(b)* or clause *(c)* of section 106.

115. Bar to jurisdiction of Civil Court : No suit or other legal proceeding shall be instituted in any Civil Court in respect of the determination of rent-rates or the settlement of any rent or the omission to determine any rent-rate or to settle any rent under this Chapter, except as provided in section 111.

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18. Section 111A was inserted by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 18.
19. The word "twenty" was substituted for the word "thirty" by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No. XV of 1961), section 18.

CHAPTER– XV

Amalgamation, Sub-division and Consolidation of holdings.

116. Amalgamation of holding of a tenant in the same village : Where various parcels of land are held by one tenant within one village, and such parcels of land or some of them are the subject of separate tenancies, such parcels of land shall, under the orders of the Revenue-officer, be amalgamated into one tenancy :

Provided that no such amalgamation shall be ordered by the Revenue-officer if the tenant has any objection thereto which appears to such officer to be reasonable and sufficient.

117. Sub-division of holding and restriction thereon : [(1) Notwithstanding anything contained elsewhere in this Part, the Revenue-officer may,—

(a) for the purpose of amalgamation of tenancies under section 116, either on his own motion or on an application made to him by one or more co-sharer tenants, in that behalf, or

(b) for the purpose of consolidation of holdings of a *malik*, under section 119, either on his own motion or on an application made to him, in that behalf, or

(c) for the purpose of sub-division of a joint tenancy for distribution of rent thereof, on an application made to him by one or more co-sharer tenants,

direct, by order in writing, such sub-division of a joint tenancy amongst the co-sharer tenants and distribution of rent thereof, including arrears of rent, if any, as he may consider fair and equitable:

Provided that no such order shall be passed unless reasonable notice is given to the parties concerned to appear and be heard in the matter :

Provided further that where an order under clause (c) is passed, and distribution of rent, by reasons thereof, results in bringing the rent of a portion of the tenancy below rupee one, a fraction of rupee one shall be rounded off into rupee one.][1]

(2) .... [2]

(3) When an order under sub-section (1) has been passed sub-dividing a joint-holding, such sub-division may be demarcated on the ground and also shown on the cadastral survey map.

118. (Omitted)

119. Persons entitled to apply for consolidation of holding : (1) Any two or more *raiyats* having lands in the same or contiguous villages may apply in the prescribed form to the Revenue-officer for consolidation of their holdings and submit along with such application a scheme for such consolidation.

(2) If not less than two-thirds of the *raiyats* in a village or a block of villages, which form one contiguous area, holding not less than three-fourths of the total cultivable area in such village or block of villages, make an application under sub-section (1) for consolidation of their holdings, such application shall be deemed to be an application on behalf of all the *raiyats* of such village or block of villages.

120. Admission of application : (1) on receipt of any application for consolidation under section 119, the Revenue-officer shall enquire into such application in the prescribed manner and shall, if he considers after such enquiry that there are good and a sufficient reasons for rejecting such application or excluding any of such land from consolidation, submit the application to the prescribed superior Revenue Authority with a recommendation that the application be rejected, or disallowed in part, specifying his reasons thereof; and on receipt of such recommendation, such superior Revenue Authority shall pass such orders thereon as he thinks proper.

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1. Sub-section (1) of section 117 was substituted for the former sub-section (1) by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ordinace No. VIII of 1967), section 19.
2. Sub- section (2) was omitted, *Ibid.*

(2) If the Revenue-officer does not make any recommendation under sub-section (1), or if such superior Revenue Authority, on receipt of the recommendation of the Revenue-officer, makes an order directing the Revenue-officer to admit the application in whole or in part, the Revenue-officer shall admit such application either in whole or in part, as the case may be, and shall deal with it in accordance with the provisions of this Chapter and of any rules made by the Provincial Government under this Act.

121. Confirmation of agreed schemes for consolidation : When a scheme for the consolidation of holding is submitted along with an application under sub-section (1) of section 119, and such scheme, including any stipulation for payment of any compensation by one party to another contained in such scheme, has been agreed to by all the *raiyats* affected by it, the Revenue-officer shall, after admitting the application either in whole or in part under section 120, examine such scheme and may, after such excamination, either confirm the scheme with or without modification or may return it for revision and may confirm it after such revision :

Provided that the Revenue-officer shall not confirm the scheme if the sum total of the rent of all holdings under the scheme has been reduced by the distribution of the rent consequent on redistribution of lands.

122. Preparation of a scheme for consolidation and appointment of Advisory Committee : (1)[3] In the following cases, namely,—

3. Sub-section (1) was substiuted for the original sub-section (1) by the E.B. State Aqcquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. XV of 1961), section 21. The original sub-section read as follows :—

122.(1) In the case where no scheme for the consolidation of holdings is submitted along with the application under sub-section (1) of section 119, or where any such scheme has been submitted with such application but has not been agreed to by all the *raiyats* affected by it, the Revenue-officer shall prepare a scheme for consolidation of the holdings of the applicants, and in the case where an application has been made under sub-section (2) of that section the Revenue-officer shall prepare a scheme for the consolidation of the holdings of each *raiyat* in the village or in the block of villages to which such application relates; and every such scheme shall be prepared in accordance with the provisions of this Act and of such rules as may be made by the Provincial Government in this behalf.

(i) Where no scheme for the consolidation of holdings is submitted along with the application under sub-section (1) of section 119, or where any such scheme has been submitted with such application but has not been agreed to by all the *raiyats* affected by it, or

(ii) where an application has been made under sub-section (2) of that section, or

(iii) where the Provincial Government by notification make an order directing that consolidation of holdings be effected in any area and the *raiyats* of such area fail to produce an agreed scheme under sub-section (1*a*),

the Revenue-officer shall prepare a scheme for the consolidation of holdings of such applicants or of each *raiyat* in such villages or area, as the case may be, and every such scheme shall be prepared in accordance with the provisions of the Act and of such rules as may be made by the Provincial Government in this behalf.

(1*a*)[4] Upon the publication of a notification under clause (iii) of sub-section (1), the Revenue-officer shall call upon the *raiyats* of the area, to which such notification relates, to produce, within a time to be fixed by him which may be extended by him, if necessary, an agreed scheme of consolidation of holding.

(2) For the purpose of assisting him in the preparation of a scheme for consolidation of holdings under sub-section (1) in any local area [or for the purpose of securing an agreed scheme for consolidation of holdings in respect of any area under sub-section (1*a*)],[5] the Revenue-officer may, subject to such rules as may be made by the Provincial Government in this behalf, appoint an Advisory Committee in respect of such area [and

4. Sub-section (1a) was inserted by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ordinance No. XV of 1961), section 21.

5. The words, brackets, letter and figure within square brackets were inserted after the words "in any local area," by E.P. Ord. XV of 1961, section 21.

may provide such Advisory Committee with such technical assistance as he may consider necessary.][6]

(2a)[7] When an agreed scheme is produced under sub-section (1a), the Revenue-officer shall deal with such scheme in the same manner as provided in section 121.

(3) In preparing a scheme for the consolidation of holdings under sub-section (1), the Revenue-officer shall have due regard to any proposal with regard to the consolidation which has the largest measure of agreement amongst the parties affected by it, and in making the redistribution of lands for the purpose of the consolidation, he shall see that the total area of a holding or the profit to be derived therefrom is affected as little as possible.

(4) If in peparing a scheme for the consolidation of holdings under sub-section (1), it appears to the Revenue-officer that the distribution of lands will result in allotment to any *raiyat* of any parcel of land of market value lower than the market value of his original parcel of land, the Revenue-officer shall in the scheme provide for the payment of compensation to such *raiyat* by the *raiyat* or *raiyats* who, in the opinion of the Reveune-officer, will be benefited by the allotment of the more valuable land of the first-named *raiyat*.

(5)[8] In preparing a scheme for the consolidation of holdings under sub-section (1), the Revenue-officer shall, in any case where the land is of such a kind that the productivity of different areas may vary from year to year, give due consideration to this fact and shall attempt to preserve the balanced character of the holdings, as far as posssible, and where the plots of land exist at different levels, he may consolidate the holdings in two or more blocks each at a different level.

6. These words were inserted after the words "in respect of such area," *ibid.*
7. Sub-section (2a) was inserted by the E.B. State Acquistion and Tenancy (Third Amendment) Ordinance, 1961 (E.B. Ord. No.XV of 1961), section 21.
8. Sub-sections (5), (6), (7), (8) and (9) were inserted after sub-section (4), *ibid.*

(6)[9] Before confirming a scheme for the consolidation of holdings in any area under section 121 or section 123, the Revenue-officer shall ascertain, as far as possible, all encumbrances, including mortgages, attached to the land situated within such area and shall issue a notice in the prescribed manner calling upon all beneficiaries of encumbrances to declare their interests within a date to be fixed in that behalf and it shall then be incumbent on the persons, in whose favour such encumbrances have been created, to declare the encumbrances before the Revenue-officer within the period fixed in such notice and if any such person fails to declare such encumbrances within the said period, the encumbrances shall cease to be attached to any part of the land originally encumbered that has not remained with its owner after consolidation.

(7)[9] In preparing a scheme for the consolidation of holdings under sub-sectios (1), the Revenue-officer shall see that the sum total of the rent of all holdings under the scheme is not reduced by the distribution of the rent consequent on redistribution of the lands.

(8)[9] In conducting any proceedings for the consolidation of holdings in any case where the value of a holding is materially changed, the Revenue-officer shall simultaneously apportion the rent in such a way that the incidence upon the owners of holdings bears the same proportion to the value of each holding as it did before.

(9)[9] Each consolidated holding shall bear one single rent.

123. Draft publication of the scheme and hearing of objections : (1) When a scheme for consolidation of holdings has been prepared, the Revenue-officer shall cause a draft of the scheme to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Provincial Government may make in this behalf.

09. See foot-note 8 on page 264, *ante*.

(2)[10] If no objection is made within the said period or, where objections are made, such objections are disposed of, the Revenue-officer shall pass an order confirming the scheme with or without modification.

*11 * * *

124. Appeals : (1) Any person aggrieved by an order of the Revenue-officer confirming a scheme under section 121 or under sub-section (2) * * *12 of section 123 may, within the period prescribed in this behalf, prefer an appeal in the prescribed manner to the prescribed superior Revenue Authority and the decision of the said superior Authority on such appeal shall, subject to the provisions of sub-section (2), be final.

(2) A second appeal, if presented in the prescribed manner and within the period prescribed in this behalf, shall lie from every order passed on appeal under sub-section (1) by such superior Revenue Authority to the Board of Revenue.

125. Final confirmation of the scheme : When the time within which appeals may be made under sub-section (1) of section 124 has expired and, if any such appeal has been made, when the time within which the second appeal may be made under sub-section (2) of that section has also expired, and all appeals made under sub-sections (1) and (2) of that section have been disposed of, and no order rejecting the scheme has been finally passed on such appeal, the Revenue-officer shall, if necessary, modify the scheme to give effect to any orders passed on appeal under the said section, if any, and shall thereafter record an order finally confirming the scheme.

10. Sub-section (2) was substituted for the original sub-section (2) by E.P. Ord. XV of 1961, sec. 22. The original sub-section (2) read as follows :—
(2) If no objection is made within the said period or, where objections are made, the Revenue-officer succeeds in meeting all such objections and the persons who made the objections have withdrawn them, the Revenue-officer shall pass an order confirming the scheme.

11. Sub-section (3) was omitted by E.P.Ord. XV of 1961, section 22.

12. The words, brackets and figure "or sub-section (3)" were omitted, by E.P. Ord. No. XV of 1961, section 23.

126. Modification of the village record-of-rights on confirmation of the scheme and the date from which the scheme takes effect : (1) Upon the final confirmation of a scheme for consolidation of holdings under section 125, the Revenue-officer shall cause the record-of-rights, maintained under this part, of the village or villages to which such scheme relates, to be modified in accordance with the scheme as finally confirmed; and every tenant affected by such scheme shall be entitled to obtain free of cost from the Revenue-officer a copy of the record-of-rights, so modified, containing the entries as relating to him.

(2) When a scheme for the consolidation of holdings has been finally confirmed under section 125, it shall take effect from the beginning of the agricultural year next after the date of the final confirmation of such scheme.

127. Demarcation of the boundaries of holdings : As soon as may be after a scheme for the consolidation of holdings takes effect, the Revenue-officer shall depute a surveyor or *amin* to demarcate the boundaries of the holdings affected by the scheme or to take such other steps for the identification on the spot of the land included in the holdings so affected as the Revenue-officer may approve.

128. Effect of final confirmation of scheme for consolidation and the rights of *raiyats* thereunder : (1)[13] On the final confirmation of a scheme under section 125, it shall be binding on all the *raiyats* to which such scheme relates.

13. Sub-section (1) was substituted by E.P. Ord. XV of 1961, sec. 24 for the original sub-section (1) which read as follows:—
128. (1) Where a scheme for the consolidation of holdings has been prepared on an application made under sub-section (1) of section 119, such scheme shall, on final confirmation, be binding on the applicant or applicants and all persons who have agreed to the consolidation of their holdings and also on every persons who may subsequently be entitled to hold or occupy any land included in the scheme or have any right or interest in such land.

*   *   *   *   *[14]

(3) Every *raiyat* affected by any scheme for the consolidation of holdings finally confirmed under section 125 shall be entitled to the possession of the holding allotted to him under the scheme with effect from the date on which the scheme takes effect; and the Revenue-officer may, on application made in this behalf by such *raiyat*, cause such steps to be taken as he may consider necessary for putting such *raiyat* in possession of the holding so allotted to him.

(4) A *raiyat* shall have the same right in the holding allotted to him under a scheme for the consolidation of holdings finally confirmed under section 125 as he had in his original holding before such consolidation.

129. Encumbrances on land included in the scheme for consolidation : (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if the holding of a *raiyat* comprised within a scheme for the consolidation of holdings finally confirmed under section 125 is, immediately before the date on which such scheme takes effect, subject to any mortgage or other encumbrance, such mortgage or other encumbrance shall, with effect from such date, be deemed to be transferred and attached to the holding created and allotted to such *raiyat* under the said scheme or to such part of such holding as may be specified in the scheme by the Revenue-officer; and thereupon the mortgagee or other encumbrancer, as the case may be, shall cease to have any right in or against the land from which the mortgage or other encumbrance has been transferred and shall continue to have the same rights in or against the holding so allotted or to such part thereof as he had in or against the original land from which the mortgage or other encumbrance had been transferred.

14. Sub-section (2) was omitted, *ibid*, which read as follows :—
(2) Where any such scheme has been prepared on an application referred to in sub-section (2) of section 119, such scheme shall, on final confirmation, be binding on all the *raiyats* in the village or villages to which such scheme relates and on every persons who may subsequently be entitled to hold or occupy any land or any right or interest in land in such village or villages.

(2) Notwithstanding anything contained in sub-section (3) of section 128 the Revenue-officer may, on application made in this behalf by any mortgagee or other encumbrancer entitled to possession of any holding or part thereof to which his mortgage or other encumbrance has been transferred under sub-section (1), cause such steps to be taken as he may consider necessary for putting such mortgagee or other encumbrancer in possession of such holding or part thereof.

130. No instrument necessary to effect transfer : Notwithstanding anything contained in any other law for the time being in force, no instrument in writing shall be necessary in order to give effect to transfer involved in carrying out any scheme for consolidation of holdings.

131.[15] Transfer of holding during the pendency of the proceedings for consolidation : (1) During the pendency of any proceedings under this Chapter, no person shall transfer any land to which such proceedings relate, without the previous permission of the Revenue-officer and where any such land is transferred with such permission, the transferee shall be deemed to be a party to such proceedings and shall be substituted in place of the transferor of the land.

(2) On and from the date of final confirmation of a scheme for consolidation of holdings under section 125, no co-sharer shall acquire by continued possession any title in a part of the holding to the exclusion of the other co-sharers.

132. Recovery of the cost of consolidation proceedings : (1) The costs of proceedings of the consolidation of holdings under this Chapter shall, on the final confirmation under section 125 of the scheme for such consolidation be assessed in the prescribed manner and be, subject to such rules as may be

15. Section 131 was substituted for the original section 131 by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No. XV of 1961), section 25. The original section 131 read as follows :—
131. Where, during the pendency of proceedings under this Chapter and after an application has been made under section 119 for the consolidation of holdings, any holding, to which such application relates, is transferred, the transferee shall be deemed to be a party to such application and shall be substituted in place of the transferor of the holdings.

made by the Provincial Government in this behalf, recovered from the *raiyats* whose holdings are affected by such scheme:

Provided that no costs shall be recoverable in respect of any proceedings arising out of an application under sub-section (1) of section 119 where the applicants have submitted an agreed scheme for consolidation of their holdings [or in respect of any proceedings arising out of an agreed scheme produced under sub-section (1*a*) of section 122.][16]

(2) The portion of the aforesaid costs which any *raiyat* is liable to pay shall be recoverable by the Provincial Government as an arrear of rent due in respect of the holding of the *raiyats* affected by the said scheme.

133. Recovery of compensation as arrears of public demand : Any amount specified in any scheme finally confirmed under section 125 as payable as compensation shall be recoverable as an arrear of public demand.

134. Bar to jurisdiction of Civil Courts : No Civil Court shall entertain any application or suit concerning any matter relating to consolidation of holdings of *raiyats* dealt with in this Chapter.

134A. Special Provision For the District of Dinajpur.– Notwithstanding anything contained in the foregoing sections of the Chapter, the scheme for consolidation of holdings executed in the areas under the police stations of Debiganj and Boda in the district of Dinajpur under the provisions of this Chapter shall be deemed to be void ab-initio and the rights and interests of the tenants existing in the lands comprised in that scheme immediately before such consolidation shall remain unaffected, as if such consolidation were never made.

Summary of Chapter XV : Chapter XV makes provision for amalgamation; sub-division and consolidation of holdings. Section 116 provides that where various parcels of land are held by one tenant within a village and such parcels of land or some of them are subject of separate tenancies, they may be amalgamated into one tenancy under the orders of the

16. These words, brackets, figures and letter were added after the words "consolidation of their holdings" by E.P. Ord. XV of 1961, section 26.

Revenue-officer. But the Revenue-officer will not order for amalgamation if the tenant has any objection which appears to him to be reasonable.

Section 117 deals with sub-division of a holding and restriction thereon. Under sub-section (1) of this section the Revenue-officer may, either on his own motion or on application made to him by one or more co-sharer tenants, direct by order in writing, such division of a joint holding among the co-sharers and the distribution of rent thereof, including arrears of rent, if any, as he considers fair and equitable. But no such notice shall be passed without giving notice to the parties concerned to appear and without giving them hearing. Under the second proviso to sub-section (1) where the distribution of rent results in bringing the rent of a portion of the tenancy below rupee one, a fraction of it shall be rounded into rupee one. When an order is passed for sub-division of a joint holding, it may be demarcated on the ground and shown on the cadastral survey map.[17]

Sections 119 to 134 deal with consolidation of holdings. Section 119 speaks of persons who are entitled to apply for consolidation of holding. Any two or more *raiyats* having lands in the same or contiguous villages may apply in the prescribed form to the Revenue-officer for consolidation of their holdings and submit along with the application a scheme for such consolidation. If two-third of the *raiyats* in a village holding three-fourth of the total cultivable area in such village, make an application for consolidation of their holdings, such application shall be deemed to be an application on behalf of all the *raiyats* of the village.

On receipt of an application for consolidation, the Revenue-officer shall enquire into the application.[18] If he considers after enquiry that there are good and sufficient reasons for rejecting such application or excluding any of such land for consolidation, he will submit the application to the prescribed superior Revenue Authority with a recommendation that it may be rejected or disallowed in part, specifying his reasons therefor; and on receipt of such

17. Sec. 117 (3).
18. Sec. 120 (1).

recommendation, such superior Revenue Authority shall pass such orders as he thinks proper.[19]

If the Revenue-officer does not make any recommendation or if the superior Revenue Authority makes an order directing the Revenue-officer to admit the application in whole or in part, the Revenue-officer shall admit such application either in whole or in part, as the case may be, and shall deal with it in accordance with the provisions of this Chapter and of any rules made by the Provincial Government under this Act.[20]

When a scheme for the consolidation of holdings is submitted along with an application under sub-section (1) of section 119, and such scheme has been agreed to by all the *raiyats* affected by it, the Revenue-officer shall, after admitting the application either in whole or in part, examine such scheme and may, after such examination, either confirm the scheme with or without modification or may return it for revision and may confirm it after such revision.[21] The Revenue-officer shall not confirm the scheme if the sum total of the rent of all holdings under the scheme has been reduced by the distribution of the rent consequent on redistribution of lands.[22]

In the following cases, the Revenue-officer shall prepare a scheme for the consolidation of holdings of the applicants or of each *raiyat* in a village or area, as the case may be[23] :—

(i) where no scheme for the consolidation of holding is submnitted along with the application under sub-section (1) of section 119, or where any scheme has been submitted with such application but has not been agreed to by all the *raiyats* affected by it, or

(ii) where an application has been made under sub-section (2) of that section, or

(iii) where the Provincial Government by notification make an order directing that consolidation of holdings be effected in any area and the *raiyats* of such area fail to produce an agreed scheme under sub-section (1*a*).

19. Sec, 120 (1).
20. Sec. 120 (2).
21. Sec. 121.
22. Sec. 121 proviso.
23. Sec. 122 (1).

Upon the publication of a notification under clause (iii) of sub-section (1), the Revenue-officer shall call upon the *raiyats* of the area, to which such notification realates, to produce, within a time to be fixed by him, an agreed scheme of consolidation of holdings.[24] For the purpose of assisting him in the preparation of a scheme for consolidation of holdings, the Revenue-officer may appoint an Advisory Committee in respect of such area and may provide such Committee with such technical assistance as he may consider necessary.[25] In preparing such a scheme the Revenue-officer will consider certain points as provided in sub-sections (3) to (8) of section 122.

When a scheme for consolidation of holdings has been prepared the Revenue-officer shall cause a draft of the scheme to be published in the prescribed manner and for the prescribed period and shall consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to rules as the Provincial Government may make in this behalf.[26] After the disposal of the objection the Revenue-officer shall pass an order confirming the scheme with or without modification.[27] Any person aggrieved by an order of the Revenue-officer confirming the scheme may prefer an appeal to the prescribed superior Revenue Authority.[28] A second appeal shall lie to the Board of Revenue.[29]

After the disposal of the appeals the Revenue-officer shall record an order finally confirming the scheme.[30] Upon such confirmation he shall cause the record-of-rights of the village or villages to which such scheme relates to be modified in accordance with the scheme as finally confirmed.[31] Every tenant affected by such scheme shall be entitled to obtain free of cost from the Revenue-officer a copy of the record-of-rights,

24. Sec. 122 (1a).
25. Sec. 122 (2).
26. Sec. 123.(1).
27. Sec. 123 (2).
28. Sec. 124(1).
29. Sec. 124(2).
30. Sec. 125.
31. Sec. 126 (1).

so modified, containing the entries.[32] When the scheme has been finally confirmed it shall take effect from the beginning of the agricultural year next after the date of the final confirmation of such scheme.[33] Each consolidated holding shall bear one single rent.[34]

After the scheme for the consolidation of holdings takes effect, the Revenue-officer shall depute a surveyor or *amin* to demarcate the boundaries of the holdings affected by the scheme or take such other steps for the identification of the land as the Revenue-officer may approve.[35]

On the final confirmation of the scheme it shall be binding on all the *raiyats* to which such scheme relates.[36] Every *raiyat* affected by the scheme shall be entitled to the possession of the holding allotted to him under the scheme with effect from the date on which the scheme takes effect; and the Revenue-officer may, on the application of the *raiyat*, put him in possession of the holding so allotted to him.[37] The *raiyat* shall have the same right in the holding allotted to him under the scheme as he had in the original holding before such consolidation.[38]

A reference has also been made in section 129 regarding encumbrances. It provides that if the holding of a *raiyat* comprised within the scheme for the consolidation of holding is, immediately before the date on which such scheme takes effect, subject to any mortgage or other encumbrances, such mortgage or other encumbrances shall, with effect from such date, be deemed to be transferred and attached to the holding allotted to such *raiyat* and thereupon the mortgagee or the encumbrancer shall cease to have any right in the land from which the mortgage or other encumbrance has been transferred and shall continue to have the same rights in the holding so allotted or to such part thereof as he had in the

32. *Ibid.*
33. Sec. 126 (2).
34. Sec. 122 (9).
35. Sec. 127.
36. Sec. 128 (1).
37. Sec. 128 (3).
38. Sec. 128 (4).

original land from which the mortgage or other encumbrance has been transferred. On an application made by any mortgagee or other encumbrancer, the Revenue-officer may put him in possession of such holding or part thereof.[39]

No instrument in writing is necessary in order to give effect to transfer involved in carrying out any scheme for consolidation of holdings.[40] During the pendency of any proceeding under this Chapter, no person shall transfer any land to which such proceedings relate, without the previous permission of the Revenue-officer and where any such land is transferred with permission, the transferee shall be deemed to be a party to such proceedings and shall be substituted in place of the transferor of the land.[41] On and from the date of final publication of a scheme for consolidation of holdings, no co-sharer shall acquire by continued possesssion any title in a part of the holding to the exclusion of the other co-sharers.[42] The cost of proceedings of the consolidation of holdings shall be assessed and recovered from the *raiyats* whose holdings are affected by such scheme.[43] But no costs shall be recoverable in respect of any proceedings arising out of an application under sub-section (1) of section 119 where the applicants have submitted an agreed scheme for consolidation of their holdings or in respect of any proceedings arising out of an agreed scheme produced under sub-section (1*a*) of section 122.[44] The portion of the costs which a *raiyat* is liable to pay shall be recoverable by the Provincial Government as an arrear of rent due in respect of the holding of the *raiyat* affected by the scheme.[45] Under section 134 no Civil Court shall entertain any application or suit concerning any matter relating to consolidation of holdings of a *raiyat*.

39. Sec. 129 (2).
40. Sec. 130.
41. Sec. 131 (1).
42. Sec. 131 (2).
43. Sec. 132 (1).
44. Sec. 132, proviso.
45. Sec. 132 (2).

CHAPTER –XVI

Provisions as to rent and realisation of rent.

[Chapter XVI deals with provisions as to rent and realisation of rent. Sections 135-137 deal with the rules as to manner, time and place of payment of rent and how the payment can be appropriated. Section 138 contains provisions relating to receipts. Section 139 deals with the liability of holding to sale for arrears of rent. Section 141 provides that all arrears of rent shall be recoverable under the Bengal Public Demands Recovery Act, 1913. Under section 140 an arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum*. Section 142 speaks of the period of limitation for the recovery of arrears of rent.]

135. Instalment of rent : (1) Subject to agreement or established usage, the rent payable by a *raiyat* shall be paid in two equal instalments falling due on such dates as may be prescribed.

(2) Subject to agreement, the rent payable by a non-agricultural tenant shall be paid in one annual instalment falling due on the last day of the agricultural year.

136. Time and place for payment of rent : (1) Every *raiyat* shall pay or tender each instalment of rent and every non-agricultural tenant shall pay or tender the rent before sunset of the day on which it falls due :

Provided that the *raiyat* or the non-agricultural tenant may pay or tender the rent paybale for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made —

(*a*) at the village *tahasil* office or at such other convenient place as may be appointed in that behalf by the Collector; or

(*b*) by postal money-order in the manner prescribed.

(3) When rent is sent by postal money-order in the prescribed manner it shall be presumed, until the contrary is proved, that a tender has been made.

(4) When rent sent by postal money-order is accepted, the fact of this acceptance shall not be used in any way as evidence of the correctness of any of the particulars set forth in the postal money-order form.

(5) Any rent or any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

137.[1] Appropriation of payment : When a *raiyat* or a non-agricultural tenant makes a payment on account of rent, such payment shall be credited towards the arrears, if any, the recovery of which is not barred by law for the time being in force, and the balance, if any, after the arrears have been satisfied, and where there is no arrear, the whole amount, shall be credited as the rent of the current year.

138. *Raiyat* making payment of his rent entitled to a receipt : Every *raiyat* or non-agricultural tenant who makes a payment on account of rent shall be entitled to obtain forthwith, from the person authorised in writing by the Collector to receive such rent, a written receipt in the prescribed form for the amount paid by him signed by the person so authorised.

139. Liability of holding to sale for arrears : The holding of a *raiyat* or the tenancy of a non-agricultural tenant shall be liable to sale in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for the rent thereof, and the rent shall be a first charge thereon.

140. Interest on arrears : An arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiry of the year in which the rent or instalments of rent, as the case may be, fall due to the date of payment or of the filing of the certificate under the Bengal Public Demands Recovery Act, 1913, whichever date is earlier.

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1. Section 137 was substituted for the original section 137 by the East Bengal State Acquisition and Tenancy (Fifth Amendment) Ordinance 1959 (E.P. Ord. No. LXIX of 1959), section 2.

141. Realisation of arrears of rent under the Bengal Public Demands Recovery Act, 1913 : All arrears of rent shall be recoverable under the Bengal Public Demands Recovery Act, 1913, subject to such rules as may be made in this behalf by the Provincial Government and not otherwise.

*2 * *

141A.[3] Amounts paid into Court to prevent sale to be a mortgage debt in certain cases : *(1)* When a co-sharer tenant, whose interests are affected by the sale of a holding or tenancy advertised for sale in execution of a certificate for arrears of rent due in respect thereof signed under the bengal Public Demands Recovery Act, 1913, pays into the Court, the amount requisite to prevent the sale,

(a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter *per centum per annum* and secured by a mortgage of such holding or tenancy to him; and

(b) his mortgage shall take priority over every other charge on such holding or tenancy other than a charge for arrears of rent.

(2) Nothing in this section shall affect any other remedy to which such co-sharer tenant would be entitled.

142. Limitation : The period of limitation for the recovery of an arrear of rent shall be three years running from the last day of the year in which the arrear fell due.

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2. The full-stop in section 141 was substituted for the colon and the proviso was omitted by the E.B. State Acquisition and Tenancy (Second Amendment) Ordinance, 1961 (E.P. Ord. No.XIV of 1961), section 8.
3. Section 141A was inserted by the E. B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P.. Ord. No. VIII of 1967), section 20.

CHAPTER -XVII

Maintenance and revision of the record-of-rights.

143. Maintenance of the record-or-rights : The Collector shall maintain up-to-date, in the prescribed manner, the record-or-rights prepared or revised under Part IV [or under this part][1] [* * *][2] [by correcting *bona fide* mistakes amd][3] by incorporating therein the changes on account of—

(a) the mutation of names as a result of transfer or inheritance;

(b) the subdivision, amalgamation or consolidation of holdings;

(c) the new settlement of lands or of holdings purchased by the Provincial Government; and

(d) the abatement of rent on account of abandonment or diluvion or acquisition of land.

143A.[4] Special provisions for correcting mistakes in the record-of-rights : (1) Any person aggrieved by an entry or omission of entry in the record-of-rights prepared or revised and finally published under Chapter IV may, notwithstanding anything contained elsewhere in this Act, file an application along with necessary requisites, for the purpose of correcting mistakes in such record-of-rights in the civil Court which would have jurisdiction to entertain a suit for possession of the land to which such entry relates or in respect of which such ommission was made.

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1. The words within square brackets were inserted by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No. VIII of 1967), section 21.
2. The words and figures "and modified under section 46" were omitted by the E.B. State Acquisition and Tenancy (Third Amendment) Ordinance, 1961 (E.P. Ord. No. XV of 1961), section 27.
3. The words within square brackets were inserted by the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1958 (E.P. Ord. No. XLIV of 1958), section 21.
4. Section 143A was inserted by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P.Ord. No.VIII), section 22.

(2) An application filed under sub-section (1) shall be deemed to be a plaint and order passed thereon shall have the force of a decree under the Code of Civil Procedure, 1908.

(3) An application filed under sub-section (1) shall contain full particulars of persons likely to be affected by an order on such application and shall also contain the full particulars of the holding to which the entry relates or in respect of which the omission complained of was made.

(4) The Court shall, for the purpose of disposal of application filed under sub-section (1), follow the following procedure, namely :—

(a) The Court shall cause notice to be served on the persons named in the application in the manner as provided in the Code of Civil Proceudre, 1908;

(b) The Court shall, within seven days of the filing of an application under sub-section (1), send a copy thereof, by registered post at the applicant's cost, to the Revenue-officer concerned for holding a local inquiry, in presence of the parties concerned, on the subject matter of the application and the Revenue-officer shall, within fifteen days of the receipts of the copy, hold inquiry and submit the report to the Court;

(c) The Court may allow such reasonbale time as it may think fit to file objection to the inquiry report referred to in clause (b) and, if no appearnace is made by the opposite party within the time mentioned in the notice, and, if no objection is filed to the inquiry report within the time so allowed, the Court may proceed *ex parte* with disposal of the application after taking into consideration the said report and other material evidence on record; and

(d) Where the report referred to in clause (b) is not submitted, or where objection referred to in clause (c) is filed, the Court shall fix a date for hearing and on that date, after hearing the parties and taking into consideration the report, if any, and other evidence which may be adduced by the parties in this behalf, shall pass such order as it may think just and proper.

(5) Any person, whose interest has been affected by reason of an entry or omission in the record-of-rights, referred to in sub-section (1), may, within fourteen days of the filing of an application under sub-section (1), appear to be added as co-applicant.

(6) The Revenue-officer shall, for the purpose of an inquiry under sub-section (4), have the same power as vested in a civil Court under the Code of Civil Proceure, 1908, including the power of,—

(*a*) enforcing attendance of any person, and examining him on oath; and

(*b*) compelling the production of any document.

(7) Within thirty days from the date of an order under sub-section (4), an appeal from that order shall lie to the District Judge who may, either himself hear the appeal or transfer it to any other Court subordinate to him but not below the rank of a Subordinate Judge for hearing.

(8) Decision under sub-section (4), if no appeal is preferred from it, or under sub-section (7), shall be final and conclusive.

(9) Where the Court passes an order under sub-section (4), or sub-section (7), revising the entries or rectifying the omission complained of under sub-section (1), it shall notify the same to the Collector and the Collector shall correct the record-of-rights accordingly.

(10) Any person interested may produce a certified copy of the orders referred to in sub-section (4) or sub-section (7) to the Revenue-officer and the Revenue-officer shall make such alterations in the record-of-rights as may be necessary to give effect to such orders.

(11) The record-of-rights corrected under sub-section (9) or sub-section (10) shall be deemed to have been prepared and finally published under Chapter IV of this Act.

(12) An application under sub-section (1) or memorandum of an appeal under sub-section (7) shall, notwithstanding anything contained in the Court Fees Act, 1870, bear a fixed Court fee or rupee one.

(13) For the purpose on an application, appeal, review, revision and consequence of non-apperance, relevant provisions of the Code of Civil Procedure, 1908, shall *mutatis mutandis* apply.

***143B. Correction of the Record-of-Rights upon inheritance.**—(1) Persons acquiring immovable property by inheritance according to their respective personal laws shall amicably effect partition of the property among them after the death of the propositus. After such partition, an instrument of partition shall be prepared and signed by all the concerned parties and shall be registered under the Registration Act, 1908.

(2) Upon presentation of the instrument of partition prepared, signed and registered under sub-section (1), the Revenue-officer shall revise the Khatian in accordance therewith.

143C. Procedure for Correction of the Record-of-Rights.– (1) The Revenue-officer on receipt of the notice under section 89 shall open a file for mutation of record-of-rights and shall issue notice to the co-sharers of the holding for mutation.

(2) For this purpose the Revenue-officer shall fix a date for objection if any. If no objection is raised within the stipulated period, the Revenue-officer shall correct the record-of-rights accordingly.

(3) If any objection is filed by any co-sharer of the holding, then the Revenue-officer shall fix a date for hearing both the parties, and after hearing, the Revenue-officer shall pass an order stating the reasons thereof, and the record-of-rights shall be corrected accordingly."

144. Revision of the record-of-rights : (1) The Provincial Government may in any case if it thinks fit make an order directing that a record-of-rights in respect of any district, part of a district or local area be [prepared or revised][5] by a

* Section 143B, 143C, added by the Act No 34 of 2006 deted 20-9-2006

5. The words within square brackets were inserted to the word "revised" by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No.VIII of 1967), section 23.

Revenue-officer in accordance with such rules as may be made by the Provincial Government in this behalf.

(2) In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make such order in any of the following cases, namely :—

(a) where not less than one-half of the total number of tenants applies for such an order;

(b) where the [preparation or revision][6] of such a record is calculated to settle or avert a serious dispute existing or likely to arise amongst the tenants; and

(c) where a settlement of rent is being or about to be made in respect of any district, part of a district or local area.

[(3) A notification in the *official Gazette* of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(4) When an order is made under sub-section (1), the Revenue-officer shall record in the record-of-rights to be prepared or revised in persuance of such order such particulars as may be prescribed.

(5) When a record-of-rights has been prepared or revised so as to contain or include therein the particulars referred to in sub-section (4), the Revenue-officer shall publish a draft of the record-or-rights so prepared or revised in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication.

(6) Any person aggrieved by an order passed by the Revenue-officer on any objection made under sub-section (5) may prefer an appeal to the prescribed Revenue Authority not below the rank of an Assistant Settlement Officer in such manner and within such period as may be prescribed.

(7) When all such objections and appeals have been considered and disposed of according to such rules as the Provincial Government may make in this behalf, the

6. *Ibid.*

Revenue-officer shall finally frame the record and shall cause such record to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly prepared or revised under this section.

(8) When a record-of-rights has been finally published under sub-section (7), the Revenue-officer shall, within such time as the Board of Revenue may fix in this behalf, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.][7]

144A.[8] Presumption as to correctness of record-of-rights : Every entry in a record-of-rights prepared or revised under section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

144B.[8] Bar to jurisdiction of Civil Court : (1) When an order has been made under sub-section (1) of section 144 directing the preparation or revision of record-or-sights in respect of any area, then, subject to the provisions of section 111, a civil Court shall not entertain any suit or application for the alteration of any rent or determination of the status of any tenant of the incidents of any tenancy in such area and if any such suit or application relating to such area is pending before a civil Court on or after the date of such order, it shall not be further proceeded with and shall abate and if any judgement, decree or order has been passed in any such suit or any order has been passed on any such application, after the said date, it shall be inoperative and of no legal effect.

(2) No suit or application shall be brought in a civil Court in respect of any order directing the preparation or revision of record-of-rights under this Chapter or in respect of framing, publication, signing or attestation of such a record or any part

7. Sub-sections (3) to (8) were inserted by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No.VIII of 1967), section 23.

8. Sections 144A and 144B were inserted, *Ibid*, section 24.

of it, and if any such suit or application is pending before a civil Court, it shall not be further proceeded with and shall abate and if any judgement, decree or order has been passed in any such suit or any order has been passed on any such application, it shall be inoperative and of no legal effect.

145. Recovery of the cost of revision of record-of-rights : (1) Where the [preparation or revision][9] of a record-of-rights has been directed under this Chapter in respect of any district, part of a district or local area, the expenses incurred in respect of such [preperation or revision][9] shall be recoverable from the *raiyats* and other occupants of land in such proportions and in such instalments, if any, as the Provincial Government, having regard to all the circumstances, may determine :

Provided that no part of these expenses shall be recoverable from the *raiyats* and other occupants in the case where the [preparation or revision] [9] of the record-of-rights has been undertaken under clause *(c)* of sub-section (2) of section 144 with a view to settlement of fair and equitable rents of such *raiyats* under the provisions of Chapter XIV.

(2) The portion of the aforesaid expenses which any person is liable to pay under sub-section (1) shall be recoverable by the Provincial Government as if it were an arrear of rent due in respect of the holding or other interest, as the case may be, of such person, situated within the said district, part of a district or local area.

9. The words within square brakcets were inserted for the word "revision" by the E.B. State Acquisition and Tenancy (Amendment) Ordinance, 1967 (E.P. Ord. No.VIII of 1967), section 25.

CHAPTER—XVIIA[1]

Land Survey Tribunal and Land Survey Appellate Tribunal

145A. Land Survey Tribunal—(1) The Government may, by notification in the Official Gazette, establish as many land Survey Tribunals as may be required to dispose of the suits arising out of the final publication of the last revised record of rights prepared under section 144.

(2) The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Tribunal.

(3) The Government shall in consultation with the Supreme Court, appoint the judge of the Land Survey Tribunal from among persons who are Joint District Judges.

(4) No suit other than the suits arising out of the final publication of the last revised record of rights prepared under section 144 shall lie in the Land Survey Tribunal.

(5) If any suit arising out of the final publication of the last revised record of rights prepared under section 144 is instituted in any civil court before the establishment of the Land Survey Tribunal under this section.

(6) Subject to the provision of sub-section (7), any person aggrieved by the final publication of the last revised record of rights prepared under section 144 may, within one year from the date of such publication or from the date of the establishment of the Land Survey Tribunal, whichever is later, file a suit in such Tribunal.

(7) A suit may be admitted within next one year after the expiry of the period specified in sub-section (6), if the Land Survey Tribunal is satisfied with the reasons for delay shown by the plaintiff.

(8) The Tribunal shall be competent to declare the impugned record of rights to be incorrect and further direct

1. Chapter XVIIA added by the Act No 9 of 2004 dated 10.3 2004

the concerned office to correct the' record of rights in accordance with its decision, and may also pass such other order as may be necessary.

145B. Land Survey Appellate Tribunal—(1) The Government may by notification in the official Gazette, establish as may Land Survey Appellate Tribunals as may be required to hear the appeals arising out of the judgment, decree or order of the Land Survey Tribunals.

(2) The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Apellate Tribunal.

(3) The Government shall appoint the judge of the Land Survey Appellate Tribunal from among persons who are or have been Judges of the High Court Division of the Supreme Court.

(4) No appeal other than the appeals arising out the judgment, decree or order of the Land Survey Tribunal shall lie in the Land Survey Appellate Tribunal.

(5) Subject to the provision of sub-section (6), any person aggrieved by any judgment, decree or order of the Land Survey Tribunal may, within three months from the date of such judgment, decree or order, prefer an appeal to the Land Survey Appellate Tribunal.

(6) An appeal may be admitted within next three months even after the expiry of the period specified in sub-section (5), if the Land Survey Appellate Tribunal is satisfied with the reasons for delay shown by the appellant.

145C. Appeal to the Appellate Division—An appeal from a judgment or order of the Land Survey Appellate Tribunal shall lie to the Appellate Division of the Supreme Court only if the Appellate Division grants leave to appeal.

145D. Powers and Procedure of Tribunals—(1) For the purposes of disposal of suits or appeals, a Land Survey Tribunal or a Land Survey Appellate Tribunal, as the case may be, shall exercise the powers and follow the procedure

under the Code of Civil Procedure 1908 (V of 1908), so far as not inconsistent with the provisions of this Act or the rules made thereunder in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him;

(b) requiring the discovery and production of any document;

(c) requiring evidence on affidavit;

(d) requisitioning any public record or a copy thereof from any office;

(e) issuing commissions for the examination of witnesses or documents and

(f) such other matters as may be prescribed by rules.

(2) Any proceeding before a Land Survey Tribunal or a Land Survey Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Penal Code (XLV of 1860).

(3) A Land Survey Tribunal or a Land Survey Appellate Tribunal shall sit at such place or places as the Government may fix.

(4) The judge of the Land Survey Tribunal or Land Survey Appellate Tribunal may make such administrative arrangements as he considers necessary for the performance of the functions of the Land Survey Tribunal or Land Survey Appellate Tribunal, as the case may be.

(5) The Land Survey Appellate Tribunal may, of its own motion or upon an application made to it, by order in writing, transfer, at any stage of the proceeding, any suit from one Land Survey Tribunal to another Land Survey Tribunal within the territorial limits of its jurisdiction.

145E. Finality of Tribunals' decisions and orders—Subject to the decisions and orders of the Land Survey Appellate Tribunal and the Appellate Division of the Supreme Court as the case may be, the decisions and orders of the Land Survey Tribunal shall be final.

145F. Bar to jurisdiction of Civil Courts—No suit arising out of the final publication of the last revised record of rights prepared under section 144 shall lie in any civil court within the territorial limits of the jurisdiction for which a Land Survey Tribunal is established under section 145A.

145G. Power to abolish Tribunals, etc.—The Government may, by notification in the official Gazette, at any time, abolish any Land Survey Tribunal established under section 145A and any Land Survey Appellate Tribunal established under section 145B, and while so abolishing, the Government shall, in the same notification, specify the courts where the suits, appeals and other proceedings pending in such Tribunals at the time of such abolition shall be transferred to and be disposed of.

145H. Overriding Effect.—Notwithstanding anything contained to the contrary, in this Act or any other law for the time being in force, the provisions of this Chapter, shall prevail.

145I. Rule making power—The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Chapter.

CHAPTER -XVIII

Jurisdiction, Appeal, Revision and Review.

146. Superintendence and control of Revenue-officers : (1) Subject to supervision by the Provincial Government, the general superintendence and control over all Revenue-officers shall be vested in, and all such officers shall be subordinate to, the Board of Revenue.

(2) Subject to the general superintendence and control of the Board of Revenue, a Commissioner of a division shall exercise control over all other Revenue-officers in his division.

(3) Subject as aforesaid and to the control of the Commissioner of the division, a Collector shall exercise control over all other Revenue-officers in his district.

147. Appeals : Subject to any special provisions for appeal made in this part or in any rules made under this Act, an appeal shall lie from every original or appellate order made under any of the provisions of this Part by a Revenue-officer as follows, namely :—

(a) to the Collector, when the order is made by a Revenue-officer subordinate to the Collector;

(aa) to the Commissioner of the division, when the order is made by the Collector of a district within the division; and

(b) * * * * * * * * * *[10]

(c) to the Board of land administration when the order is made by the Commissioner of a division.

148. Limitation for appeals : The period of limitation for an appeal under section 147 shall run from the date of the order appealed against and shall be as follows, that is to say—

(a) when the appeal lies to the Collector.......................... .... thirty days.

10. Omitted p.o 12 of 1973

(b) when the appeal lies to the Commissioner of a division................. .... sixty days.

(bb) when the appeal lies to the Board of land administration .... ninety days.

(c) * * * * * * * * * *[11]

149. Revision : (1) Subject to any special provision for revision made in this Part, the Collector may of his own motion within one month of the date of any order passed under this Part by a Revenue-officer subordinate to him or on application made in that behalf within one month of the date of such order, revise such order.

(1A) The Commissioner of a division may, of his own motion, within three months of the date of any order passed under this Part by the Collector of a district within the division or on an application made in that behalf within three months of the date of such order, revise such order.

(2) * * * * * * * * * *[12]

(3) The Board of Revenue may, of its own motion, within six months of the date of any order passed under this Part by the Commissioner of a division or on an application made in that behalf within six months of the date of such order, revise such order.

(4) The Board of Revenue may at any time order the correction of any entry in a record-of-rights maintained under this Part or in a settlement rent-roll prepared and finally published under this Part which, it is satisifed, has been made owing to a *bona fide mistake* :

Provided that an order shall not be revised under this section if an appeal has been preferred against such order :

Provided further that no order for correction shall be made under sub-section (4) until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

11. Omitted p.o 12 of 1973
12. Sub- section (2) Omitted p.o 12 of 1973

150. Review by Revenue-officers : (1) A Revenue-officer may, on application made in that behalf by any party interested or of his own motion review any order passed by himself or by any of his predecessors in office under this Part, and in so reviewing any order, may modify, reverse or confirm any such order :

Provided that—

(a) an application for review of an order shall not be entertained unless it is made within thirty days from the date of such order or, when such application is presented after the expiry of the said period of thirty days, unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within the said period;

(b) an order shall not be reviewed if an appeal has been preferred against such order or an application for revision of such order has been made to the superior Revenue Authority; and

(c) an order shall not be modified or reversed on a review until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(2) No appeal shall lie from an order rejecting an application for review or confirming on a review any previous order.

151. Computation of the period of limitation for appeals, applications for remission and review under this Act : (1) Sections 6,7,8 and 9 and sub-section (2) of section 29 of the Limitation Act, 1908, shall not and, subject to the provisions of Part V of this Act, the remaining provisions of the former Act, shall, so far as applicable, apply to all suits, appeals and applications arising under the said Part.

(2) All suits, appeals and applications referred to in Part V shall be instituted and made within the time prescribed therefor; and every such suit instituted, appeal preferred, and application made, after the prescribed period of limitation shall be dismissed, although limitation has not been pleaded.

CHAPTER XVIII—A

Special Provisions for exemption of rent

151A. Exemption of Rent in Respect of Certain Land.—(1) Notwithstanding anything contained elsewhere in this Act, where a malik or non-agricultural tenant holds any land which is used primarily as a place of public prayer or religious worship or a public graveyard or a public cremation ground, he may apply in the prescribed form, to the Deputy Commissioner for exempting such land from payment of rent.

(2) Within three months from the date of receipt of such application, the Deputy Commissioner shall, after such enquiry as he deems fit, ascertain whether any land specified in the application is used as mentioned therein.

(3) If the Deputy Commissioner is satisfied that any land specified in the application is used as mentioned therein, he shall determine, in the prescribed manner, the area of the land so used and pass an order exempting such area from payment of rent, and, if the Deputy Commissioner is not so satisfied, he shall pass an order rejecting the application.

(4) If the area determined under sub-section (3) forms a part of a holding or tenancy, the Deputy Commissioner shall separate such area from the rest of the holding or tenancy and create a separate rent-free tenancy for such area.

(5) Where a separate rent-free tenancy is created under sub-section (4), the Deputy Commissioner shall reduce the rent payable in respect of the holding or tenancy out of which such rent-free tenancy is created in proportion to the area of such rent-free tenancy.

(6) Any person aggrived by an order of the Deputy Commissioner under sub-section (3) may, within thirty days from the date of such order, prefer appeal to the Commissioner of the Division

(6A) Any person aggrieved by an order of the Commissioner of the Division under sub-section (6) may,

within sixty days from the date of such order, make an application to the Board of Land Administration for the revision of such order.

(8) The Board of Land Administration may, at any time, of its own motion, revise any order passed under this section by the Commissioner of the Division or the Deputy Commissioner.

(9) An order for exemption from payment of rent under this section shall take effect from the beginning of the agricultural year next after the date of such order.

Explanation.—In this section—

(a) a place of public prayer or religious worship' means a public place specifically earmarked, permanently preserved and regularly used exclusively for the purpose of offering prayers or worship by the followers of any particular religion or faith, such as Mosque, Jamatkhana, Eidgah, Temple, Church, Math, Synagogue, Pagoda, etc, and includes such adjuncts thereto as are necessary for such purpose and treated as appertaining to such place, but does not include any place used for deriving pecuniary benefit therefrom; and

(b) 'Deputy Commissioner' includes Additional Deputy Commissioner (Revenue).

151B. Re-assessment of Rent on Lands Exempted from payment Thereof under section 151A.—(1) When any land exempted from payment of rent under section 151A ceases to be used for the purpose for which such exemption was allowed, it shall be liable to be re-assessed to rent and it shall be competent for the Deputy Commissioner to re-assess the rent of such land at a rate which he may deem fair and equitable having regard to the rates of rent generally paid for lands of a similar description and with similar advantages in the same village or in the neighbouring villages :

Provided that no such re-assessment shall be made unless not less than fifteen days' notice has been given to the persons concerned to appear and be heard in the matter.

(2) Any person aggrieved by an order of the Deputy Commissioner under sub-section (1) may, within thirty days from the date of such order, prefer an appeal to the Commissioner of the Division.

(2A) Any person aggrieved by an order of the Commissioner of the Division under sub-section (2) may, within sixty days from the date of such order make an application to the Board of Land Administration for the revision of such order and the order of that Board shall be final.

(3) * * * *[1]

(4) The rent re-assessed under this section shall be payable from the beginning of the agricultural year next after the date of such re-assessment.

1. Omitted by P. O 12 of 73

CHAPTER XVIII—B[2]

Special Provisions of Exemption of Land Revenue in Relation of Agricultural Land

[NB. This new Chapter was added after Chapter XVIII—A by SAT (3rd Amendment) Order, 1972 (P.O. 96 of 1972, Art. 2)]

151C. Exemption of Land Revenue in Respect of Agricultural Land in Certain Cases.—Notwithstanding anything contained elsewhere in this Act and subject to the provisions of this Chapter, where the total area of agricultural land held in Bangladesh by a family does not exceed twenty-five standard bighas, such family shall be exempted from payment of land revenue in respect of such lands with effect from the first Baisakh of 1379 BS or from such date as it may be entitled to such exemption under section 151-1, as the case may be:

Provided that a family holding a total area of agricultural land exceeding twenty-five standard bighas on the 16th day of December, 1971, shall not be entitled to claim any exemption from payment of land revenue as a result of decrease in the total area to twenty-five standard bighas or less due to any transfer made during the period from the 16th day of December, 1971, to the last date from submission of the statement under section 151-D:

Provided further that exemption from payment of land revenue under this section or under section 151-I shall not absolve any person from the liability of payment of the Development and Relief Tax under the Finance (Third) Ordinance, 1958 (EP Ord. LXXXII of 1958), the Additional Development and Relief Tax under the Finance Ordinance, 1970 (EP Ord. XVI of 1970), the Education Cess under the Bengal (Rural) Primary Education Act, 1930 (Bengal Act VII of 1930), and the Local Rate under the Basic Democracies Order, 1959 (President's Order 8 of (1959), payable on the basis of

2. Inserted by Ordinance 21 of 1969, S.9

land revenue and such other taxes, rates and cessess as may be payable under any other law for the time being in force.

151D. Compulsory Filing of Statements by Heads of Families Holding More Than Twenty-five Bighas of Agricultural Land.—By the 31st day of January, 1973 all heads of families, who either individually or with other members of their families held or hold more than twenty-five standard bighas of agricultural lands in Bangladesh on the 16th of December, 1971, or on the date of submission of the statement, shall submit to the Revenue-officer a statement of all such lands in such form and manner as may be prescribed.

Provided that the Government may extend the time for submission of such statements in all cases or in any particular case or class of cases or in respect of any area up to such date as it thinks fit.

151E. Penalty For Non-Submission of Statements or Wilful Suppression of Land.—Any head of a family, who fails, without any reasonable cause, to submit the statement required under section 151D within the specified time or wilfully makes any omission from, or incorrect declaration in, the statement submitted by him under the said section, shall be liable to a fine which may extend to taka one thousand, and the land for which no statement has been filed or which has been omitted from the statement or in respect of which the incorrect declaration is made shall stand forfeited to the Government :

Provided that where the failure to submit the statement or the omission from, or incorrect declaration in, the state relates to any land transferred by any member of the family or after the 16th day of December, 1971, such land shall not be forfeited but an equivalent quantity of land out of the lands actually held by any member or membrs of the fimily shall be forfeited in lieu thereof.

151F. Liability of Exempted Holdings for Re-assessment in Certain Cases.—If any person who is exempted from payment of land revenue under section 151C subsequently acquires at any time agricultural land by inheritance, purchase, gift, heba or otherwise which, added to the total

quantity of agricultural land already held by him and other members of his family, exceeds twenty-five standard bighas in the aggregate, the entire quantity of agricultural land held by him and the other members of his family shall be liable to the payment of land revenue with effect from the following dates, namely:

(i) in case of acquisition before the first day of Kartik of the Bengali year, with effect from the first day of Kartik of that year ; and

(ii) in case of acquisition on or after the first day of Kartik of the Bengali year, from the first day of the Bengali year next following the date of such acquistion.

151G. Compulsory Submission of Statement by Head of The Family Acquiring Land in Certain Cases.—A head of a family, who, or any of the members of whose family, acquires agricultural land making the entire quantity of agricultural land held by such family liable to the payment of land revenue under section 151F, shall, within ninety days of the date of such acquisition, submit to the Revenue Officer statement of all agricultural lands held by him and the other members of his family in such form and manner as may be prescribed.

151H. Penalty For Non-Submission of Statement or wilful Suppression of Land.—A head of a family, who fails to submit a statment under section 151G within the specified time or wilfully makes any omission from, or incorrect declaration in the statement submitted by him under the sad section, shall be liable to a fine which may extend to taka one thousand, and the land for which no statement has been filed or which has been omitted from the statement or in respect of which the incorrect declaration is made shall stand forfeited to the Government.

151-I. Exemption From Payment of Land Revenue in Case of Decrease in Area.—Where the total area of agricultural land held by a family liable to the payment of land revenue decreases after the submission of the statement under section 151D or section 151G to twenty-five standard bighas or less

due to inheritance or bona fide transfer, the head of such family may apply, in the prescribed form, praying for exemption from payment of land revenue, to the Revenue-officer stating the dates and reasons for such decrease, and the Revenue-officer shall, on being satisfied about the statement made in the application after making such enquiry as he deems fit, pass an order allowing such exemption with effect from the following dates, namely :

(i) in case the application is made before the first day of kartik of the Bengali year, with effect from first day of kartik of that year ; and

(ii) in case the application is made on or after the first day of Kartik of the Bengali year, from the first day of the Bengali year next following the date of such application.

151J. Definition of Family and Head of Family.—For the purpose of this Chapter—

(a) "family" in relation to a person includes such person and his wife, son, unmarried daughter, son's wife, son's son and sons' unmarried daughter :

Provided that an adult and married son who has been living in spearate mess independently of his parents continuously since befoe the 16th day of December, 1971, and his wife, son and unmarried daughter shall be deemed to constitute a separate family :

Provided further that in the cases of lands held under waqf, waqf-al-al-aulad, debuttor or any other trust where the beneficiaries have no right to alienate such lands as their personal property, all such beneficiaries together shall be deemed to constitute a separate family in relation to such lands ; and

(b) "head of a family" means—

(i) in cascs other than those mentioned in the second proviso to clause (a) the person, male or female, in relation to whom a family is determined by the Revenue-officer in the prescribed manner; and

(ii) in the cases mentioned in the second proviso to clause (a), the Mutawalli, Sebait or Trustee, as the case may be.

CHAPTER –XIX

Rules.

152. Power to make rules : (1) The Provincial Government may, after previous application, make rules for carrying out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the form of the application referred to in sub-section (1) of section 86 and the manner of and procedure for determining the amount of abatement referred to in that sub-section;

(b) * * * * * *[1]

(c) the form of the notice referred to in clause *(a)* of sub-section (1) and sub-section (4) of section 89 and the amounts of process fees referred to therein;

(d) the Revenue Authority referred to in sub-sections (3) and (4) of section 90;

(e) the form of the notice referred to in clause *(b)* of sub-section (1) of section 92 and the manner in which and the period within which such notice is to be given, and the manner of publication of the notice referred to in sub-section (3) of that section;

(f) the manner of selection of land by the Revenue-officer for transferring encumbrances under section 94;

(g) the procedure to be followed and the power to be exercised by Revenue-officers in determining the rent-rates referred to in clause *(a)* of sub-section (1) of section 99, and the form of a table of rent-rates under that clause, the manner of preparing such table and the particulars to be specified therein;

(h) the form of a settlement rent-roll under clause *(b)* of sub-section (1) of section 99, the manner of preparing the same and the particulars to be specified therein;

1. Omitted by p.o 72 of 1972

(i) the manner of determining the normal yield per acre of land referred to in clause *(b)* of sub-section (2) and in sub-section (3) of section 100;

(j) the manner of determining the average rate of rent referred to in clause *(f)* of sub-section (2) and in sub-section (3) of section 100;

(k) the manner and period of publication of a draft table of rent-rates under sub-section (1) of section 101 and the Revenue Authority referred to in sub-section (3) of that section;

(l) the manner and period of publication of a draft settlement rent-roll under sub-section (1) of section 108, and the disposal of objections under that sub-section;

(m) the confirming authority referred to in sub-section (1) of section 109 and the manner of final publication of the settlement rent-roll under sub-section (3) of that section;

(n) the superior Revenue Authority referred to in sub-section (1) of section 110;

(o) the manner of presenting an appeal referred to in sub-section (1) of section 111;

* * * * * *[2]

(q) the form of the application referred to in sub-section (1) of section 119;

(r) the manner of making the inquiry referred to in sub-section (1) of section 120, the superior Revenue Authority to whom the application referred to in that sub-section is to be submitted by the Revenue-officer and the procedure to be followed in dealing with the applications referred to in sub-section (2) of that section;

(s) the manner of preparation of the scheme for consolidation of holdings referred to in sub-section

2. Clause (p) was omitted by E.P. Act No. VI of 1964, section 7.

(1) or section 122 and the appointment and constitution of the Advisory Committee referred to in sub-section (2) of that section;

(t) the manner and period of publication of a draft scheme for consolidation of holdings under sub-section (1) of section 123 and the disposal of objections under that sub-section;

(u) the period within which and the manner in which an appeal under sub-section (1) of section 124 and a second appeal under sub-section (2) of that section shall be presented and the superior Revenue Authority referred to in sub-section (1) of that section;

(v) the manner of assessment of the cost of proceedings for consolidation of holdings referred to in sub-section (1) of section 132 and the recovery of such cost under that sub-section;

(w) the dates of payment of instalments of rent referred to in sub-section (1) of section 135;

(x) the manner of payment or tender of rent by postal money order under section 136;

(y) the form of the written receipt referred to in section 138;

(z) the procedure to be followed in recovering arrears of rent under section 141;

(za) the manner in which the record-of-rights referred to in section 143 shall be maintained up-to-date;

(zb) the procedure to be followed and the powers to be exercised by Revenue-officers in revising the record-of-rights under section 144.

[E. B. Act XXVIII of 1951]

THE SCHEDULE

Enactments Repealed.

(See section 80.)

Year 1	No. 2	Short title. 3	Extent of repeal. 4
		Bengal Regulations	
1793	I	The Bengal Permanent Settlement Regulation, 1793.	The whole
1793	II	The Bengal Land-revenue Regulation, 1793.	So much as has not been repealed.
1793	VIII	The Bengal Decennial Settlement Regulation, 1793.	Ditto.
1793	XIX	The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.	Ditto.
1793	XXXVII	The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.	Ditto.
1794	III	The Bengal Native Revenue-officers Regulation, 1794.	Ditto.
1800	VIII	The Bengal Revenue-fre Lands Regulation, 1800.	Ditto.
1801	I	The Bengal Land-revenue Assessment Regulation 1801.	Ditto.
1805	XII	The Cuttack Land-revenue Regulation, 1805.	Ditto.
1812	V	The Bengal Land-revenue Sales Regulation, 1812.	Ditto.
1812	X	The Bengal Leases and Land-revenue Regulation, 1812.	Ditto.
1814	XXIX	The Ghatwali Lands Regulation, 1814.	The whole.
1816	V	The Bengal Kanungos Regulation, 1816.	Ditto.
1817	XII	The Bengal Patwaris Regulation, 1817.	So much as has not been repealed

Year. 1	No. 2	Short title. 3	Extent of repeal. 4
1819	I	The Bengal Kanungos and Patwaris Regulation, 1819.	So much as has not been repealed
1819	II	The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.	Ditto.
1819	VIII	The Bengal Patni Taluks Regulation, 1819.	Ditto.
1820	I	The Bengal Patni Taluks Regulation, 1820.	The whole.
1821	IV	The Bengal Land-revenue (Assistant Collectors) Regulation, 1821.	So much as has not been repealed
1822	VII	The Bengal Land-revenue Settlement Regulation, 1822.	Ditto.
1825	IX	The Bengal Land-revenue Settlement Regulation, 1825.	Ditto.
1825	XIII	The Bengal Land-revenue Settlement (Resumed Kanungos and Revenue-free Land) Regulation, 1825.	The whole.
1825	XIV	The Bengal Revenue-free Lands Regulation, 1825.	So much as has not been repealed
1827	V	The Bengal Attached Estates Management Regulation, 1827.	The whole
1828	III	The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1828.	So much as has not been repealed
1828	IV	The Bengal Land-revenue Settlement Regulation, 1828.	Ditto.
		Central Acts.	
1848	XX	The Bengal Landholders' Attendance Act, 1848.	The whole.
1853	VI	The Rent Recovery Act, 1853.	So much as has not been repealed
1859	V	The Bengal Ghatwali Lands Act, 1859.	The whole.
1885	VIII	The Bengal Tenancy Act, 1885.	So much as has not been repealed

Year. 1	No. 2	Short title. 3	Extent of repeal. 4
		Bengal Acts.	
[1][1859	XI	The Bengal Land-revenue Sales Act, 1859.	The whole.]
1862	VII	The Bengal Land-revenue Resumption Act, 1862.	So much as has not been repealed
1865	VIII	The Bengal Rent Recovery (Under-tenures) Act, 1865.	Ditto.
1868	III	The Bengal Land-revenue Settlement Act, 1868.	Ditto.
[1][1868	VII	The Bengal Land-revenue Sales Act, 1868.	The whole.]
1876	VII	The Land Registration Act, 1876.	Ditto.
1879	VIII	The Bengal Rent Settlement Act, 1879.	Ditto.
1897	V	The Estates Partition Act, 1897.	Ditto.
1904	III	The Bengal Settled Estates Act, 1904.	Ditto.
		Assam Regulation.	
1886	I	The Assam Land and Revenue Regulation, 1886.	The whole.
		Assam Act.	
1936	XI	The Sylhet Tenancy Act, 1936.	The whole.

1. These entries were inserted by E.B. Ordinance No III of 1956, section 21.

APPENDIX –I

STATE ACQUISITION RULES, 1951.

(Originally published under Notification No.6227 L.R., dated the 17th July, 1951 and No. 9536 L.R., dated the 30th October, 1951, at pages 761-768 and 1529-1560, part 1, of the *Dhaka Gazeette, Extraordinary*, of the 20th July, 1951 and 31st October, 1951 respectively.)

CHAPTER –I

Preliminary

1. Short title : These rules may be called the East Bengal State Acquisition Rules, 1951.

2. Interpretation : In these rules, unless there is anything repugnant in the subject or context,—

(1) "the Act" means the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951);

(2) "section" means a section of the Act; and

(3)[1] "the Director of Land Records and Surveys" includes the Additional Director of Land Records and Surveys.

CHAPTER –II

Acquisition of the interest of rent-receivers under Chapter II of the Act.

[2]**3. Notification under section 3 (1) and (2) :** The notifications referred to in sub-section *(1)* and sub-section (2) of section 3 shall be in the Form No. I and Form No. II respectively appended to these rules where the rent-receivers are specified or described by name and in Form No. IIA and Form No. IIB respectively appended to these rules where the rent-receivers are specified or described by reference to areas wherein they have interests and shall contain the particulars indicated therein.

1. Inserted by notification No.3036 L.R., dated the 25th Feburary, 1956.
2. Substituted by notification No. 4634 L.R., dated the 31st March, 1956.

4. Publication of proclamation : (1) As soon as may be after the date of acquisition of the interests of a rent-receiver under sub-section *(1)* of section 3 in any estate, *taluk*, tenure, [3]holding or tenancy, the Revenue Officer shall, in the manner provided in sub-rule (2), cause to be published in such estate, *taluk*, tenure, [3]holding or tenancy, a proclamation in the local vernacular, and English specimen of which is contained in the Form No. III appended to these rules.

(2) The proclamation shall be published by beat of drum as far as possible in every village comprised in such estate, *taluk*, tenure, [3]holding or tenancy and also by affixing a copy thereof in some conspicuous place of every such village and at every *cutchery* of the rent-receiver concerned which is known to the Revenue Officer to be situated in, and used for the collection of rents of, such estate, *taluk*, tenure, [3]holding or tenancy.

[4]**4A. Service of notice under section 3A and form of return referred to therein :** (1) The notice and the return referred to in section 3A shall be in the Form No. IIIA appended to these rules.

(2) The notice may be served—

(a) by delivering the same to the person who is intended to be bound by it or to his authorised agent, or, on failure of such service, by affixing the same to some conspicuous part of the house in which the said person resides; or

(b) by affixing a copy of the notice to a conspicuous part of any of the *cutcheries* of any estate, *taluk*, tenure, [3]holding or tenancy, held by the rent-receiver, or, if no such *cutchery* be found, by posting it on some conspicuous place on any such estate, *taluk*, tenure, [3]holding or tenancy; or

(c) by registered post to his usual place of residence or to the place where he may be known to reside.

3. Amended by notification No. 9107 L.R., dated the 25th July, 1953.
4. Inserted by notification No. 6849 L.R., dated the 8th August, 1951.

5. Service of notice under section 4(1) and form of return preferred to therein : *(1)* The notice and the return referred to in sub-section *(1)* of section 4 [5]other than a notice under item *(b)* of sub-section *(1)* of section 4 for the submission of a statement of arrears of rent and cesses and interest referred to in clause *(c)* of sub-section (4) of section 3, shall be in the Form No. IV appended to these rules.

(2) The notice may be served—

(a) by delivering the same to the person who is intended to be bound by it or to his authorised agent, or, on failure of such service, by affixing the same to some conspicuous part of the house in which the said person resides; or

(b) by affixing a copy of the notice to a conspicuous part of any *cutchery* of the estate, *taluk*, tenure, [6]holding or tenancy, to which it relates, or, if no such *cutchery* be found, by posting it one some conspicuous place on such estate, *taluk*, tenure, [6]holding or tenancy, or

(c) by registered-post to his usual place of residence or to the place where he may be known to reside.

6. Inspection of papers under section 4(6) and fees for taking copies thereunder: *(1)* The inspection of papers under sub-section (6) of section 4 shall be permitted only on application to the Revenue Officer and at such time and place and under such supervision as the Revenue Officer may prescribe for the purpose.

(2) The fees referred to in the said sub-section for taking copies of papers shall be paid in the same manner and at the same rates as have been prescribed in rules 310 and 311 of the Bengal Records Manual, 1943.

7. Determination of rents for *khas* lands : *(1)* Before passing an order determining the rent of any *khas* land of any rent-receiver under section 5, the Revenue Officer shall give the rent-receiver an opportunity of being heard.

5. Amended by notification No.6334 L.R., dated the 4th May, 1954.
6. Amended by notification No.9107 L.R., dated the 25th July, 1953.

[7](2) When the rents of *khas* lands of any rent-receiver or rent-receivers have been determined under the said section, the Revenue Officer shall cause a notice to be served in the Form No. V appended to these rules either individually on the rent-receivers, or as a general notice in the village where *khas* lands assessed are situated, according to the circumstances of each case as the Revenue Officer deems fit.

8. *Ad interim* payment under section 6 [8]or section 6A : *(1)* The annual *ad interim* payment under sub-section *(1)* or sub-section (2) of section 6 [8]or under sub-section *(1)* or sub-section (4) of section 6A, shall be made according to the agricultural year, and the amount payable on such account for any such year, shall be paid as soon as possible after the close of such year.

(2) Such *ad interim* payment may be made to the person entitled to it or to an agent duly appointed by such person by a registered or authenticated power-or-attorny to receive the same. The payment may also be made by postal money order at the written request of the payee subject to the condition that the money order charge shall be borne by him and met by deduction of the amount of such charge from the amount so payable.

9. Determination of net income under section 6 : *(1)* In determining the net income under sub-section (3) of section 6 from a share or part of any estate, *taluk*, tenure, holding or tenancy, the amount of deduction to be made under item *(i)* of the said sub-section will bear the same proportion to the total annual land revenue or rent and cesses which were payable for the entire estate, *taluk*, tenure, holding or tenancy, immediately before the notified date as the share bears to the entire estate, *taluk*, tenure, holding or tenancy, or the area of the part bears to the area of the entire estate, *taluk*, tenure, holding or tenancy, as the case may be: and

8. * * * * *

(2) Omitted.

7. Substituted by notification No. 1295 L.R., dated the 10th August, 1957.
8. Amended by notification No. 9107 L. R, dated the 25th July 1953.

(3) The amount of deduction to be made under item *(iii)* of sub-section (3) of section 6 shall be determined at the annual average of the expenditure incurred for the purposes mentioned in that item during such number of years as the Revenue Officer may deem fair and equitable to adopt in the circumstances of each case.

(4) The collection charges referred to in item *(iv)* of sub-section (3) of section 6 shall be the actual collection charges incurred by the Provincial Government, subject to the maximum laid down in that item.

10. Service of notice regarding *ad interim* payment : When the amount of *ad interim* payment for any year receivable by any rent-receiver under sub-section *(1)* or (2) of section 6 [9]or under sub-section (1) or (4) of section 6A has been determined, the Revenue Officer shall cause to be served on the rent-receiver a notice thereof in the Form No.VI appended to these rules in the manner provided in rule 1.

11. Appeals under section 7: [10](1) The superior Revenue Authority to whom an appeal under section 7 shall lie shall be—

(i) the Collector of the district in which the office of the Revenue Officer against whose order the appeal is preferred is situated, if such Revenue Officer is an officer subordinate to the Collector,

(ii) the Commissioner of the Division, if the order appealed against was passed by the Collector of a district as a Revenue Officer, and

(iii) the Director of Land Records and Surveys, if the order appealed against was passed by the Settlement Officer, and the Settlement Officer, if the order appealed against was passed by a Revenue Officer subordinate to him.

(2) Every memorandum of appeal under section 7 shall be in writing and verified, shall state the grounds on which the appeal is based and shall be accompanied by a certified copy of the order appealed against.

09. Amended by notification No. 9107 L.R., dated the 25th July, 1953.
10. Substituted by notification No. 1062 L.R., dated the 24th November, 1951.

(3) An appeal against an order of a Revenue Officer under sub-section (4) of section 4 shall be presented within one month from the date of the order appealed against, and an appeal against an order of a Revenue Officer under section 5 or against an order of a Revenue Officer determining the amount of any *ad interim* payment under section 6 or section 6A shall be presented within one month from the date of service of the notice under rule 7 or 10, as the case may be, relating to such order.

11A. [11]**Payment of *ad interim* compensation :** When the amount of *ad interim* payment payable to any rent-receiver under section 6 or 6A has been finally determined after disposal of appeals, if any, it shall be paid as promptly as possible by the Revenue Officer, to the rent-receiver entitled thereto or to any person duly authorised by him in writing to receive such payment or on the written request of the rent-receiver, the amount payable may be remitted to him by postal money order, the cost of remittance being met out of such amount.

12. Manner of payment of fine under section 8: The fine imposed under Chapter 11 of the Act shall be duly paid in cash into a Government Treasury, and a copy of the receipted treasury challan showing the credit shall, within 7 days after the expiry of the period referred to in section 8, be submitted to the Revenue-officer imposing the fine.

13. Authority for granting permission for transfer under section 9 : The authority for granting permission for the transfer of any estate, *taluk*, tenure, [12] holding, tenancy or land under sub-section *(1)* of section 9 shall be the Collector of the district in which such estate, *taluk*, tenure, [12]holding, tenancy or land or a major portion of it is situated.

11. This rule was inserted by notification No.468 L.R., dated the 13th April, 1960, published in the Dacca gazette, Part I, dated 28th April, 1960.
12. Amended by notification No.9107 L.R., dated the 25th July, 1953.

CHAPTER –III

Rules relating to the special provisions in Chapter III of the Act regarding lands held in lieu of service.

14. Determination of fair and equitable rent under section 11(2) : The Collector shall give the parties an opportunity of being heard before passing an order under sub-section (2) of section 11, determining the fair and equitable rent of any land.

15. Forms of applications under sections 11(2), 12(1) and 13(1) : An application under sub-section (2) of section 11 sub-section *(1)* of section 12 and sub-section *(1)* of section 13 shall be in the Form Nos. VII, VIII, and IX respectively appended to these rules and shall contain, so far as may be possible, the particulars specified therein.

16. Process fee referred to in section 15 : *(1)* The process fee referred to in section 15 which shall accompany an application under sub-section (2) of section 11 or sub-section *(1)* of section 12 or sub-section *(1)* of section 13 shall be paid according to the scale specified below :—

(i) For each notice, whether directed to one or more persons where such persons reside in the same village—Rupee one and annas four.

(ii) Where the notice is to be served on persons in different villages, a separate fee shall be charged for service in each village.

(2) The process fee payable under this rule shall be paid in court-fee stamps.

CHAPTER –IV

Preparation or revision of record-of-rights under Chapter IV of the Act.

17. General control and supervision : Except as otherwise provided for by the Act or by these rules, all proceedings and orders of a Revenue Officer passed in the discharge of any duty imposed upon him by the Act or these rules shall be subject to the supervision and control of the Provincial Government; and the proceedings and orders of each Revenue Officer under the Act or these rules shall be subject to the supervision and control of the Revenue Officer or Revenue Officers to whom he may be declared or ordered by the Provincial Government to be, for the purposes of the Act or these rules, subordinate.

18. Particulars to be recorded in the record-of-rights : Where an order is made under section 17 for the preparation or revision of a record-of-rights, the particulars to be recorded shall include, either without or in addition to other particulars, some or all of the following, namely:—

(a) the name, father's name and address of each tenant or occupant;

(b) the class or classes to which each such tenant or occupant belongs, that is to say, whether he is a properietor, tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy *raiyat*, non-occupancy, *raiyat*, under-*raiyat*, with or without a right of occupancy, or a non-agricultural tenant, and if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(c) the situation, class, quantity and one or more of the boundaries of the land held by each tenant or occupier;

(d) the name, father's name and address of each tenant's landlord;

(e) the name, father's name and address of each proprietor in the local area or estate;

(f) the rent payable at time the record-of-rights is being prepared, as well as the rent determined as fair and equitable according to rules 28-30;

(g) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing one, the time at which, and the amount by which, it increases;

(h) the mode in which the rent has been fixed whether by contract, by order of a Court, or otherwise;

(i) if the rent is a gradually increasing one, the time at which and the steps by which it increases;

(j) the rights and obligations of each tenant and landlord in respect of—

(i) the use by tenants, of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply, and

(ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant or for prevention of the onrush of floodwater, whether or not such appliances be situated within the boundaries of such land;

(k) the special conditions and incidents, if any, of the tenancy;

(l) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

(m) if the land is claimed to be held rent-free, whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority;

(n) the rent determined as fair and equitable under section 26.

19. Procedure for preparing or revising a record-of-rights : When an order has been made under sub-section *(1)* of section 17 directing that a record-of-rights be prepared or revised by a Revenue Officer, in respect of any district, part of a district or local area, the record-of-rights shall be prepared or revised in the manner prescribed in the rules in this Chapter and the work shall ordinarily consist of the following stages namely :—

(i) traverse survey;

(ii) cadastral survey;

(iii) erection of boundary marks;

(iv) preliminary record-writing (or *khanapuri*);

(v) local explanation (or *Bujharat*);

(vi) attestation;

(vii) determination of fair and equitable rent and preparation of the settlement rent-roll;

(viii) publication of the draft record under sub-section *(1)* of section 19;

(ix) disposal of objections under sub-section *(1)* of section 19;

(x) filing of appeals under sub-section (2) of section 19 and disposal thereof;

(xi) preparation of the final record; and

(xii) publication of the final record under sub-section (3) of section 19;

Provided that any or all of the first six stages may be omitted, or a new stage added, according to the circumstances of the case, with the approval of the Director of Land Records and Surveys.

20. Special power of Revenue officer appointed with the additional designation of Settlement officer : A Revenue Officer, appointed with the additional designation of "Settlement Officer" under rule 39, may, at any time before the publication of the final record, direct that any portion of the following in respect of any district, part of a district or local area shall be cancelled and that the proceedings shall be taken up afresh from such stage as he may direct.

21. Traverse Survey : The cadastral survey shall be based upon a traverse survey, and such traverse shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys.

22. Cadastral Survey : *(1)* In the course of proceedings under section 17, a large scale map showing roads, rivers, railways and other physical features of the country, as well as homesteads and other fields, shall be prepared for each village, as the unit of survey and record.

(2) When the area contained within the external boundaries of the village maps of any previous survey is unsuitable as the unit of survey and record, the Revenue Officer appointed with the additional designation of Settlement Officer shall, after ascertaining, as far as possible, the opinions of the local people concerned, submit his proposals for the determination of the area to be adopted as the unit of survey and record, to the Board of Revenue, through the Controlling Officer or Officers to whom he is subordinate. The unit shall, if sanctioned by the Board of Revenue, be declared and adopted as a village in preparing or revising the record-of-rights.

23. Erection of boundary marks : Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and any also be erected at any other points where this necessary, in the opinion of the Revenue Officer, for the definition of the boundary.

24. Preliminary record-writing : At this and the two following stages the draft record shall be prepared. The draft record shall consist of statements of rights which are hereinafter styled as the *khatians*. There shall ordinarily be a separate *khatian* for each person interested, or each group of persons jointly interested, in the land, whether as properietor, tenure-holder, *raiyat*, under-*raiyat*, occupant or non-agricultural tenant, and each *khatian* shall show the rights and liabilities of each person or group of persons, according to the particulars which have been specified in rule 18. At this stage, all such particulars shall find entry, but no entry shall

be made as to the revenue, rent or cess, the class to which the tenant belongs, or the special conditions and incidents of the tenancy. At his stage, there shall also be prepared a fieldindex or *khasra* arranged according to the serial numbers of the fields in the village. This field-index shall not form part of the draft record. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by a Revenue Officer or a *kanungo* in a summary manner and on the basis of actual possession.

25. Local explanations : When the areas of the fields have been extracted and entered in the preliminary record, a copy of each *khatian* shall be made over by a Revenue Officer or a *kanungo* to the person or group of persons in whose names the *khatian* has been opened, or to their representatives. Each *khatian* shall then be examined on the ground, with reference to the village map, by a Revenue Officer or a *kanungo*, and shall be explained to the person or persons concerned, or their representatives, if present. The Revenue Officer or *kanungo* shall make such corrections as are necessary in the map, in the draft record, and in the copies of the *khatians* which have been distributed, if they are produced for this purpose. At this stage, entries as to rent which is payable, according to the statements of both the landlord and tenant, shall be made in the draft *khatians* of the tenants and in such copies as are produced; but the other particulars which were commited at the stage of preliminary record-writing shall be deferred until the stage of attesation.

26. Attestation and allotment of land under section 20 (3) : This stage of the operation shall be taken up after the landlords and tenants have been allowed a sufficient interval to study their copies of the *khatians*. The attestation of each village shall be taken up at a convenient place in or near the village. At least one month before the attestation begins, a proclamation shall be published in the village giving due notice to the landlords and tenants and calling on them to appear before the Revenue Officer on the date fixed, bringing with them their copies of the *khatians*. In this proclamation, they will also be called upon to submit, within 30 days of the

publication thereof, statements detailing all the lands they hold in the Province and the lands they intend to retain under sub-section (3) of section 20. In special cases they may, however, be allowed to submit such statement after the expiry of the said period but before the attestation of the connected *khatian* actually begins. When such statements are duly furnished, the Revenue Officer shall open subsidiary *(khanda) khatians* in the names of the landlord, or tenants concerned and transfer to them from main *khatians* the lands wanted to be retained under sub-section (3) of section 20. The rents will be recorded in the main *khatians* with cross reference to the subsidiary *khatians*. If no such statement is duly furnished, the Revenue Officer shall, himself at the time of attestation, make allotment of lands up to the quantity admissible under section 20 by transferring to subsidiary *(khanda) khatians* to be opened in the names of the landlords and tenants concerned as aforesaid—

(i) firstly, the lands covered by their homesteads and other buildings, except *cutchery* buildings, staff quarters, *hats or bazars*,

(ii) secondly, cultivated and cultivable lands including tanks, care being taken to allot such lands which would, in the opinion of the Revenue Officer, be most advantageous to the allottee, and

(iii) thirdly, vacant non-agricultural lands.

As each person appears before him, the Revenue Officer shall examine his *khatian*, read out all the important entries, make corrections where required, and see that the *khatian* is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner and on the basis of actual possession. In the *khatian* of each proprietor or group of proprietors, he shall enter with his own hand the revenue payable to the Provincial Government. In the *khatian* of each tenant or group of tenants he shall enter with his own hand the class to which the tenant or group of tenants belongs, the special conditions and incidents (if any) of the tenancy and the rent lawfully payable or deliverable to

each landlord or group of landlords. In the *khatian* of each landlord or tenant, the Revenue Officer shall also record the cesses lawfully payable by each person or group of persons. The Revenue Officer shall then sign and date the office copy of the *khatian*, and if the landlord or tenant produces his copy of the *khatian*, the Revenue Officer shall see that it corresponds with the office copy so attested. When the Revenue Officer has completed the attestation of all the *khatians* of a village, he shall draw up a formal proceedings to this effect.

27. Choice and allotment of land under section 20(3) when a record-of-rights is revised by omitting the stage of attestation : If a record-of-rights is revised by omitting the stage of attestation, the Revenue Officer shall issue separate notices on those persons, who have *khas* lands in excess of the limit prescribed in section 20, to submit statements detailing the lands they intend to retain under sub-section (3) of that section, within a month of the service of such notice. If no such statement is furnished within that period, the Revenue Officer shall himself allot lands up to the quantity admissible under section 20, according to the principles laid down in rule 26.

28. Determination of fair and equitable rents : The Revenue Officer shall determine the fair and equitable rents of all lands according to the principles laid down in sections 23, 24, 25, 26, 27 and 28.

29. Determination of normal annual yield of land under section 24(4) : *(1)* The normal annual yield of any land, for which such rent as is referred to in sub-section (4) of section 24 is paybale shall be determined in the manner prescribed in sub-rule (2) to (5).

(2) For each *thana*, the Revenue Officer shall determine, by local inquiries, the average outturn (in maund) of different crops per acre, for different classes of lands.

Where the Revenue Officer considers it necessary, he may cause crop-cutting experiments to be made for the purpose of determining the average outturn of any crop per acre, for any class of land in the *thana*.

(3) When the Revenue Officer has determined the average outturn under sub-rule (2), he shall cause the figures relating thereto to be published at some convenient place in each village wihtin the *thana*, with a general notice informing the landlords and the tenants concerned that they may file objections to such figures within thirty days from the date of such publication. The fact of such publication and the last date on which objections may be filed shall also be proclaimed in each such village by beat of drum on the date of such publication.

(4) The Revenue Officer may, after considering the objection, if any, filed under sub-rule (3), revise the average outturn so determined.

(5) For the purposes of sub-section (4) of section 24, the normal annual yield of any crop in respect of any land of any class shall bear the same proportion to the average outturn of such crop per acre determined for such class of land in the *thana* under the foregoing sub-rules as the area of such land bears to the area of one acre.

(6) If the Revenue Officer thinks that the application of such average outturn to any land will be unfair or inequitable, he may, after giving the parties an opportunity of being heard, determine the normal annual yield of such land in such manner as he considers fit, and in doing so, he shall have regard to the circumstances of each case and record the reasons for and the basis of such determination.

[1]**29A. Preparation of preliminary rent-roll** : (1) Notwithstanding anything contained in these rules, the Director of Land Records and Surveys may order the preparation, at any time before the preparation of rent-rolls under rule 30, a preliminary rent-roll for each village in respect of all lands of the following classes in the *khas* possession of rent-receivers, cultivating *raiyats*, cultivating under-*raiyats* and non-agricultural tenants, namely:—

(a) lands covered by homestead or any other building with necessary adjuncts thereto, other than such

1. Inserted by notification No.3036 L.R., dated the 25th February, 1956.

building or part of a building outside the homestead as is used primarily as office or *cutchery* for the collection of rents of any estate, *taluk*, tenure, holding or tenancy and may be decided to be acquired by the Provincial Government,

(b) lands used for agricultural or horticultural purposes including tanks,

(c) lands which are cultivable or which are capable of cultivation on reclamation, and

(d) vacant non-agricultural lands.

(2) The preliminary rent-roll shall contain the following particulars :—

(a) Names, fathers' names and addresses of the possessors and the owners.

(b) Their shares and description of their rights.

(c) Particulars of the land.

(d) Fair and equitable rents determined according to the principles of sections 23, 24, 25, 26, 27 and 28.

(e) Cesses payable.

(3) Before preparing the preliminary rent-roll, the Revenue Officer shall publish a proclamation in the village informing the persons concerned of the time and the place at which the preparation of the roll will begin.

(4) At the time and place fixed the Revenue Officer shall determine the fair and equitable rents payable for the lands after deciding in a summary manner the disputes if any, raised in the *khanapuri* stage or on the spot and shall then enter in the preliminary rent-roll the fair and equitable rents so determined.

30. Preparation of settlement rent-roll : For the purpose of determining fair and equitable rents referred to in rule 28 the Revenue Officer shall prepare a rent-roll for each village in accordance with the following procedure :—

(i) Before preparing the rent-roll, the Revenue Officer shall issue a proclamation informing all persons in whose names *khatians* have been opened, of the time and place at which the preparation of the rent-roll

will begin. If any person be absent, the Revenue Officer shall make no entry in the rent-roll which would have the effect of altering the rent or fixing a new rent of that person until a special notice has been duly served on that person.

(ii) When determining the final entries to be made in the rent-roll, the Revenue-officer shall read out or cause to be read out in his presence, the principal entries relating to the *khatian* of each person whose rent is to be settled and shall enter in the rent-roll with his own hand the fair and equitable rent settled for each such *khatian*.

(iii) The newly settled rents will then be incorporated in the draft record-of-rights.

31. Publication of the draft record-of-rights under section 19 (1) : The Revenue Officer shall then publish the draft record-of-rights by placing it for public inspection free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village, informing all persons, in whose names *khatians* have been opened, of the place at which the draft record of that village will be open to public inspection, the period during which it will be open to such inspection and the last date on which objections under sub-section (1) of section 19 may be filed. Notwithstanding anything contained in the proclamation, the Revenue Officer may extend the period during which the draft record will be open to inspection and during which objections may be filed.

32. Disposal of objections under section 19 (1) : Blank forms of objection shall be supplied free of charge, and objections shall, as far as practicable, be made in such forms. Along with the original objection, the objector shall file a copy or copies of the same for service on all other persons who, in the opinion of the Revenue Officer, are materially interested in the case. The Revenue Officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection, and with each notice to a person, other than the objector, he shall

forward a copy of the objection. Objections regarding the ownership of land or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner on the basis of actual possession. The record shall contain a brief summary of the evidence taken and an abstract of the reasons for the decision. When a Revenue Officer directs that a change shall be made in the rent recorded as payable by any tenant, he shall direct that a corresponding change shall be made in the cess, if any, recorded as payable by such tenant. Objections shall not be disposed of in the absence of any of the parties materially interested or their representatives, unless the Revenue Officer be satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

33. Filing of appeals under section 19 (2) : (1) Every appeal under sub-section (2) of section 19 shall be in writing and shall be accompanied by a certified copy of the order appealed against [2][and a process fee payable in court-fee-stamps according to the scale spcified in rule 16.]

(2) Every such appeal shall, within one month of the date of the order appealed against, be filed to the Revenue Officer appointed with the additional designation of Settlement Officer or to such Revenue Officer appointed with the additional designation of Assistant Settlement Officer as may be empowered by him in this behalf.

(3) Before passing the final order on any such appeal, the Appellate Officer shall give the parties an opportunity of being heard and shall record in the proceedings an abstract of the reasons for his decision.

34. Prepration of the final record : When all objections under sub-section *(1)* of section 19 and all appeals under sub-section (2) of that section have been disposed of and when the draft record has been corrected in accordance with the original and appellate orders on all objections, the Revenue

2. The words within square brackets were inserted by notification No.268 L.R., dated the 5th April, 1960, published in the Dacca gazette, Part 1, dated the 14th April 1960.

Officer shall proceed to frame the final record. The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of *khatians* prepared in forms which are generally similar to the forms used for the *khatians* of the draft record. The *khasra* shall not form part of the final record. The final record shall be printed or prepared in manuscript, according as the Provincial Government may, by general or special order, determine.

35. Publication of the final record under section 19 (3) : The Revenue Officer shall publish the final record-of-rights by placing it for public inspection, free of charge, during a period of not less than one month, at such convenient place as he may determine. A proclamation shall previously be published in each village informing the landlords and tenants of the place at which the final record of that village will be open to public inspection and the period during which it will be open to such inspection.

36. Grant and revision of certificate under section 20 (4) : The authority for granting a certificate under sub-section (4) of section 20 shall be the Collector of the district, and a certificate so granted shall be subject to revision annually unless the Provincial Government by a special order otherwise directs in a particular case or class of cases.

37. Manner of selection of lands under section 20 (5) *(ii)* : (1) The portion of the lands to be selected under clause *(ii)* of sub-section (5) of section 20 shall be such as would, in the opinion of the Revenue Officer, yield an annual net income equivalent to the amount exclusively applied annually to religious or charitable purpose without reservation of pecuniary benefit for any individual.

(2) In determining the annual net income of any land under sub-rule *(1)*, the Revenue Officer shall have regard to the provisions in sub-sections *(1)* to (4) of section 39 and the [3]rules made thereunder.

(3) The amount referred to in sub-rule *(1)* shall, where the *wakf*, *wakf-al-aulad*, debutter or other trust (hereinafter

3. See rules 53 to 55.

referred to as 'trust') exists for more than ten years, mean the annual average or the amounts exclusively applied to religious or charitable purposes during the last ten years, and in other cases, the annual average of the amounts so applied during the entire period elapsed since the creation of such trust; and include such remuneration of the *mutwalli*, *shebait* or trustee, as the case may be, as the Revenue Officer may, in consideration of the nature, extent and other circumstances of the trust, determine as fair and reasonable [4]and in the case of a *wakf* or *wakf-al-aulad*, also include the contribution payable under section 59 of the Bengal *Wakf* Act, 1934:

Provided that in determining such annual average, the Revenue Officer shall not take into account any amount on account of remuneration of a *mutwalli*, *shebait* or trustee, unless the deed of trust expressly provides for payment of remuneration to him:

Provided further that the remuneration of a *mutwalli*, *shebait* or trustee determined by the Revenue Officer as fair and reasonsable shall, in no case, exceed the amount of remuneration provided for in the deed of trust.

(4) In determining the annual average of the amounts exclusively applied to religious or charitable purposes, the Revenue Officer shall examine the books of accounts, if any, maintained by the *mutwalli*, *shebait* or truestee, as the case may be, and hold such other enquiry as he thinks necessary.

(5) The Revenue Officer shall call upon the *mutwalli*, *shebait* or trustee, as the case may be, to select lands up to the quantity admissible under sub-rule (1) in the manner as provided in rule 27, and on the failure of the *mutwalli*, *shebait* or trustee to make selection accordingly, the Revenue Officer shall make the allotment as far as may be, according to the principles laid down in rule 26 regarding such allotment.

38. Revision of record-of-rights under section 31 : (1) When an order is made under sub-section *(1)* of section 31, the Revenue Officer shall revise or record such particulars, if any,

4. Amended by notification No.15708 L.R., dated the 12th December, 1956.

as may be specified in such order, in accordance with the procedure prescribed in sub-rule (2).

(2) The Revenue Officer shall cause to be published a proclamation in each of the villages concerned, informing the landlords, tenants and other occupants of lands within the village that a compensation Assessment-roll will be prepared in respect of such village on the basis of the existing record-of-rights and calling upon them to furnish such information as may be necessary for revising or recording the particulars referred to in sub-rule *(1)* and also to submit statements detailing all the lands they hold in the Province and the land they intend to retain under sub-section (3) of section 20, within one month from the date of the publication of the proclamation.

(3) In the matter of allotment of lands under sub-section (3) of section 20, the Revenue Officer shall follow the principles laid down in rule 26 regarding such allotment.

(4) The Revenue Officer shall then determine the fair and equitable rents according to the procedure laid down in rules 28-30 and correct the record-of-rights on the basis of the information furnished under sub-rule (2) and incorporate therein the fair and equitable rents so determined.

(5) The Revenue Officer shall then publish, in the manner provided in rule 31, the record-of-rights as corrected under sub-rule (4) inviting objections agsinst any entry in or omission from such record.

(6) The mode of the disposal of objections filed under sub-rule (5) shall be the same a prescribed in rule 32.

CHAPTER -V

Powers of Revenue Officers in preparing or revising record-of-rights and preparing Compensation Assessment-rolls.

39. Powers vested in Settlement and Assistant Settlement Officers : When Revenue Officer is appointed for the purpose of preparation or revision of a record-of-rights, or for the purpose of preparation of compensation Assessment-roll under Part IV of the Act, within any district, part of a district or local area, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer." Every such officer is hereby vested with—

(a) the power to cut and thresh the crop on any such land and to weigh the produce with a view to estimating the capabilities of the soil; and

(b) the power to take down evidence with his own hand in the English language in proceedings held under Part IV of the Act in which an appeal is allowed in accordance with the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits.

40. Further power vested in Assistant Settlement Officer under Bengal Act V of 1875 : A Revenue Officer appointed with the additional designation of "Assistant Settlement Officer" is also hereby vested with all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875.

41. Further powers vested in Settlement Officer under Bengal Act V of 1875 : A Revenue Officer appointed with the additional designation of "Settlement Officer" is also hereby vested with all the powers of Superintendent of Survey under the Bengal Survey Act, 1875.

42. Further powers vested in Settlement and Assistant Settlement Officer : A Revenue Officer appointed with the additional designation of "Settlement Officer" or "Assistant Settlement Officer" is also hereby vested with all the powers exercisable by a Civil Court in the trial of suits.

43. Power of Settlement Officer to make over certain matters to Assistant Settlement Officers : A Revenue Officer appointed with the additional designation of "Settlement Officer" may, by general or special order make over for disposal to any Assistant Settlement Officer subordinate to him—

(a) objections under sub-section (1) of section 19 and sub-section (1) of section 40,

(b) the settlement of fair and equitable rents,

(c) the preparation of a settlement rent-roll, and

(d) the preparation of Compensation Assessment-roll.

44. Power of Settlement Officer to withdraw and transfer cases : A Revenue Officer appointed with the designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer subordinate to him any of the proceedings mentioned in rule 43 and may dispose of them himself or transfer them for disposal to any other Assistant Settlement Officer subordinate to him. He is also declared to be the Revenue Authority for the purpose of sub-section (2) of section 39.

45. Power of Collector where no special Settlement Officer is appointed : Where no special Settlement Officer has been appointed for any district, the Collector of that district is hereby appointed to discharge all the functions of a Revenue Officer under Part IV of the Act and is vested with all the powers of a Settlement Officer under rules 39 to 44.

46. Powers vested in Director of Land Records and Surveys : In respect of all operations under part IV of the Act which have been placed under the administrative control of the Director of Land Records and Surveys, East Bengal, that Officer is hereby appointed to discharge all the functions of a Revenue Officer under the said Part and is vested with all the powers of a Settlement Officer under rules 39 to 44. In respect of such operations he is further declared to be the superior Revenue Authority for the purpose of the second proviso to sub-section (2) of section 57.

47. Powers of the Commissioner of State Purchase : The Commissioner of State Purchase is hereby appointed to discharge all the functions of a Revenue Officer under the Act. He is vested with all the powers of the Director of Land Records and Surveys under rules 39 to 46. He is also declared to be the appellate authority in the case of original orders on objections passed by the Director of Land Records and Surveys.

CHAPTER –VI

Preparation of Compensation Assessment-rolls under Chapter V of the Act.

48. Form and manner of preparing compensation Assessment-rolls and the particulars to be specified therein : (1) The Compensation Assessment-roll referred to in section 33 shall be prepared in the Form No. X appended to these rules and shall contain the particulars specified therein.

(2) Before preparing the Compensation Assessment-roll, the Revenue Officer shall issue a proclamation informing the rent-receivers and also the persons whose *khas* lands in excess of the limit prescribed in section 20 will be acquired, of the time and place at which the preparation of the roll will begin.[5]

(3) The Revenue Officer shall prepare the Compensation Assessment-roll on the basis of the record-of-rights finally published or deemed to have been finally published under Chapter IV of the Act.

(4) When determining the final entries to be made in the Compensation Assessment-roll, the Revenue Officer shall read out or cause to be read out in his presence the principal entries relating to the properties and assets of each person whose compensation is to be determined, and shall enter in the Compensation Assessment-roll with his own hand the compensation determined in respect of each such person.

49. Calculation of net income by deducting sums from gross assets : (1) Before calculating the sums or determining the expenditure or charges referred to in clause *(b)* of sub-section *(1)* of section 35, the Revenue Officer shall issue a notice asking the rent-receiver in whose name Compensation Assessment-roll will be prepared to file statements within a month of the service of the notice giving the following information :—

5. Amended by notification No. 15708 L.R., dated the 12th December, 1956.

(a) his total agricultural income and the sum payable by him as agricultural income-tax under the Bengal Agricultural Income Tax Act, 1944, during the year referred to in item *(i)* or item *(ii)*, as the case may be, of clause *(a)* of sub-section (1) of section 35, supported by a true copy of the notice of demand in respect of the latest assessment, before such year, of his income under the said Act;

(b) his total non-agricultural income and the sum payable by him as income-tax under the Income Tax Act, 1922, during such year, supported by a true copy of the notice of demand in respect of the latest assessment, before such year, of his income under the said Act;

(c) the total annual expenditure, if any, incurred by him on account of the maintenance of any irrigation or protective works in the lands concerned during such year;

(d) the actual collection charges incurred by him in respect of the interests concerned during such year and a period of nine years next preceding such year.

(2) The Revenue Officer shall verify the statements filed under sub-rule *(1)* with the information collected by himself from official records or any other source.

(3) In calculating the sums referred to in sub-clause *(i)* of clause *(b)* of sub-section *(1)* of section 35, the Revenue Officer shall have regard to the principle laid down in sub-rule *(1)* of rule 9.

50. The manner of apportionment of compensation between the holder of a temporary tenure or tenancy and his landlord : The apportionment of compensation under clause (2) of section 37 between the holder of a temporary tenure or tenancy and his immediately superior landlord shall be made in the manner prescribed below :—

(a) the total net income from such tenure or tenancy shall first be computed under section 35 on the basis of the assets payable to the holder thereof and the net income so computed shall, for the purpose of this rule be

deemed to be the net income of the immediately superior landlord;

(b) the amount of compensation payable in respect of such net income shall then be calculated at the rate applicable under section 37 to the total net income (including the net income computed under the next preceding clause), of the immediately superior landlord from all his rent-receiving interests in the Province;

(c) out of the amount of compensation calculated under clause *(b)*, the holder of the temporary tenure of tenancy shall get a sum equivalent to one-thirtieth of the amount of compensation so calculated multiplied by the number of complete years of the undexpired period of the temporary tenure or tenancy not exceeding thirty, and the immediately superior landlord shall get the balance, if any.

51. Assessment of compensation in respect of properties dedicated exclusively to charitable or religious purposes : (1) The annuity referred to in clause (3) of section 37 shall be equal to the amount calculated in accordance with the principles laid down in sub-rule (3) of rule 37 :

Provided that—

(i) where in the deed of *wakf*, *wakf-al-aulad*, *debutter* or other trust, as the case may be, any specified amount or any portion of the net income [6]plus the contribution payable under section 59 of the Bengal Wakf Act, 1934, from the property held under such deed has been reserved for expenditure on religious or charitable purposes, the annuity shall not exceed such amount or portion of the net income, and

(ii) the annuity shall in no case, exceed the annual net income from such property as determined under section 35.

(2) If the annual net income from such property as determined under section 35 is greater than the amount for

6. Amended by notification No. 15708 L.R., dated the 12th December 1956.

which an annuity is admissible under sub-rule *(1)*, the compensation shall be payable for the balance of the annual net income and shall be assessed under the ordinary rate admissible under clause *(1)* of section 37.

52. Preparation of compensation Assessment-roll in respect of a rent-receiver having interest in more than one area : If a rent-receiver holds rent-receiving interests in more than one area, the amount of compensation payable for the acquisition of such interests shall be calculated in the following manner :—

(a) if Compensation Assessment-rolls are being simultaneously prepared for more than one such area the compensation shall be calculated on the total net income of such rent-receiver from all his rent-receiving interests in all such areas, and such net income and the compensation so calculated together with such other particulars as are required to be specified in a Compensation Assessment-roll under section 33 and the [7]rules made thereunder in respect of all such interests of the rent-receiver in all such areas shall be included in the Compensation Assessment-roll for one of such areas or in a separate Compensation Assessment-roll to be prepared by the Revenue Officer in one of such areas;

(b) if, in preparing the Compensation Assessment-roll for any new area or areas in which such rent-receiver holds any rent-receiving interests, it is found that a Compensation Assessment-roll or Compensation Assessment-rolls in respect of the rent-receiving interests of such rent-receiver in any other area or areas has or have already been prepared and finally published under section 42, the compensation for the acquisition of the rent-receiving interests of such rent-receiver in such new area or areas shall be calculated at an amount equivalent to the difference between (i) the amount of compensation admissible

7. See rule 48.

on the total net income of such rent-receiver from all such interests in such new area or areas and the area or areas to which the roll or rolls so published relates and *(ii)* the total of the amounts of compensation shown in such roll or rolls.

53. Determination of net annual profit from lands of classes *(a)* and *(c)* *(i)* mentioned in section 39 *(1)* : *(1)* In determining the normal annual produce of land under clause *(a)* of sub-section (3) of section 39, the Revenue Officer shall have regard to the principles laid down in sub-rules (2) to (5) of rule 29.

(2) The cost of cultivation of any crop under sub-clause (i) of clause *(b)* of sub-section (3) of section 39, shall, subject to the maximum laid down in that sub-clause, be the cost generally incurred in the locality for the cultivation of such crop by hired labour, which shall be ascertained by the Revenue Officer by local enquiry.

(3) For determining the deductions to be made under sub-clauses *(ii)*, *(iii)* and *(iv)* of clause *(b)* of sub-section (3) of section 39, the Revenue Officer shall, as far as may be follow the procedure laid down in rule 49.

54. Determination of net annual profit from lands of classes *(b)* and *(a)* mentioned in section 39 *(1)* : *(1)* For the purpose of determining, under sub-section (4) of section 39, the net annual profit from any *hat, bazar* or land mentioned in items *(b)* and *(d)*, sub-section *(1)* of that section, the Revenue Officer shall issue a notice calling upon the person, in whose name Compensation Assessment-roll will be prepared, to file, within a month of the service of the notice, a statement, supported by documentary evidence, if any, showing the gross and net profits derived by him from such *hat, bazar* or land during the last five years or, where the *hat* or *bazar* exists for less than five years, during the entire period elapsed since the establishment thereof. After examining such statement, if filed within that period, and making such enquiries as he thinks fit and also after giving such person an opportunity of being heard, the Revenue Officer shall ascertain the amount of the annual average gross profits derived by such person from

such *hat, bazar* or land during the periods as aforesaid and then determine the annual average net profit after deducting from the annual average gross profit the revenue or rent, cesses, rates and taxes including income-tax and agricultural income-tax payable by such person in respect of, and collection charges and all other expenditure necessary for deriving profits from such *hat, bazar* or land.

(2) The annual average net profit as determined under sub-rule *(1)* shall be deemed to be the net annual profit from such *hat, bazar* or land for the purpose of assessment of compensation under sub-section *(1)* of section 39.

55. Calculation of annual letting value of non-agricultural lands and compensation for buildings under section 39 *(1)* *(e)* and *(f)* : *(1)* The annual letting value of the lands under items *(e)* and *(f)* *(i)* of sub-section *(1)* of section 39 shall be the rents that the lands would have fetched, had they been let out, and in determining such rents, the Revenue Officer shall have regard to the principles laid down in section 23, so far as they apply to non-agricultural lands.

(2) In arriving at the actual cost of construction of any building less depreciation under item *(f)* *(ii)* of sub-section *(1)* of section 39, the Revenue Officer shall take into account the evidence if any produced, in respect of the actual expenditure for the construction of the building and [8]may also obtain and take into account the estimates of a building expert of the Provincial Government not below the rank of an Executive Engineer regrading the cost likely to have been incurred for the construction of the building and the amount which should be deducted from such cost on account of depreciation.

56. Manner of apportionment of the compensation between a cultivating *raiyat* or cultivating under-*raiyat* or non-agricultural tenant and his mortgagee under section 39 (5) : Where the land, held by a cultivating *raiyat* or a cultivating under-*raiyat* or a non-agricultural tenant, for which compensation is paybale under sub-section *(1)* of section 39, is subject

8. Amended by notification No. 2038 L.R., dated the 13th February, 1954.

to a mortgage, the compensation payable under the said sub-section to such cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant shall be apportioned between such person and his mortgage in the following manner :—

(a) one-half of the compensation shall always be payable to the cultivating *raiyat*, cultivating under-*raiyat* or non-agricultural tenant; and

(b) the mortgage money with the interest legally payable up-to-date in the case of a mortgage carrying interest or the profits for the unexpired period of the mortgage in the case of a usufructuary mortgage to be determined by the Revenue Officer in such manner as he thinks fit, shall be payable to the mortgagee out of the remaining one-half of the compensation, and the remainder of the compensation, if any, shall be payable to such *raiyat* under-*raiyat* or tenant, in addition to the amount mentioned in clause *(a)*.

57. Publication of the draft Compensation Assessment-roll under section 40 *(1)* and disposal of objections : *(1)* After preparing the Compensation Assessment-roll under section 33, the Revenue Officer shall cause a draft of it to be published in the same manner and for the same period as prescribed in rule 31.

(2) The objections to the draft Compensation Assessment-roll shall be filed and disposed of under sub-section *(1)* of section 40 in the same manner as prescribed in rule 32.

58. Filing of appeals under section 41 and disposal thereof : *(1)* Every appeal under section 41 shall be in writing and shall be accompained by a certified copy of the order appealed against.

(2) The Superior Revenue Authority within the meaning of section 41 shall be —

(i) the Director of Land Records and Surveys in all cases, and

(ii) the Settlement Officer in cases where the order appealed against was passed by a Revenue Officer subordinate to him.

(3) Before passing the final order on any such appeal, the Director of Land Records and Surveys or the Settlement Officer, as the case may be, shall give the party an opportunity of being heard and shall record in the proceedings and abstract of the reaons for his decision.

59. Final publication of the Compensation Assessment-roll under section 42 : The Revenue Officer shall publish the final Compensation Assessment-roll under section 42 in the same manner and for the same period as prescribed in rule 35.

60. Publication of the proclamation under section 45 : The proclamation under section 45 in local vernacular shall, at least 15 days before the end of the agricultural year in which the publication of the notification under sub-section (2) of section 43 is made, be published in each village, Union Board Office, *thana*, Sub-divisional Officer's Office and the Collectorate within which the village is situated.

61. Assignment of *tauzi* number by the Collector under section 46 *(1)* : After the final publication of the Compensation Assessment-roll, the Collector shall assign a *tauzi* number to all the lands under one *tahsil* and inform the Revenue Officer accordingly. The Revenue Officer shall, thereafter, re-arrange the *khatians* under that *tauzi* number by eliminating therefrom the entire chain of interests of rent-receivers and showing therein only the tenants who will come directly under the Provincial Government.

62. Distribution of the record-of-rights under section 46(2) : After the *khatians* have been reprinted as required under sub-section *(1)* of section 46, a copy of the *khatian*, with a copy of the manp of the village wherein the land is situated, shall be delivered free of cost, to the person or body of persons in whose name or names the *khatian* has been opened.

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[1]CHAPTER –VIA

Preparation of Compensation Assessment-rolls under Chapter VA of the Act.

62A. Verfication of returns, papers and documents under section 46A (2) : The verification of returns, papers and documents under sub-section (2) of section 46A shall be made with the existing records-of-rights or by local enquiry or by both these means, according as circumstances may require. If necessary, the Revenue Officer may also prepare new maps and records of any area.

62B. Form and manner of preparing Compensation Assessment-rolls and the particulars to be specified therein : [2] *(1)* The Compensation Assessment-roll referred to in sub-section (3) of section 46A shall be prepared in the Form No.X*(1)* appended to these rules and shall contain the particulars specified therein.

(2) Before preparing the Compensation Assessment-roll, the Revenue Officer shall issue a proclamation informing the rent-receivers of the time and place at which the preparation of the roll will begin.[3]

(3) When determining the final entries to be made in the Compensation Assessment-roll, the Revenue Officer shall read out or cause to be read out in his presence the principal entries relating to the properties and assets of each person whose Compensation is to be determined, and shall enter in the Compensation Assessment-roll with his own hand the Compensation determined in respect of each such person.

62C. Application of certain rules : Rules 49 to 55 and 57 to 59 shall apply *mutatis mutandis* in the matter of preparation and publication of a Compensation Assessment-roll under Chapter VA of the Act.

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1. Inserted by notification No.9107 L.R., dated the 25th July, 1953.
2. Inserted by notification No. 7804 L.R., dated the 21st June, 1954.
3. Amended by notification No. 15708 L.R., dated the 12th December, 1956.

CHAPTER –VII

Decision of disputes with regard to compensation under Chapter VII of the Act.

63. Form of application under section 52*(1)* and manner of payment of fee therefor : *(1)* An application under sub-section *(1)* of section 52 requiring the Special Judge to refer to the High Court any question of law shall be in Form No. XI appended to these rules.

(2) The fee of fifty rupees referred to in the said sub-section shall be paid in court-fee stamps.

64. Manner of filing an appeal under section 53 : An appeal under section 53 relating to any land shall *(i)* contain full particulars of the connected land, [4]*(ii)* state specifically the entry [4]sought to be revised and the relevant entry, if any, in the Compensation Assessment-roll which, according to the applicant, would require revision and *(iii)* give the grounds on which the appeal is based, and shall be accompanied by a certified copy of the order appealed against.

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4. Omitted by notification No. 9107 L.R., dated the 25th July, 1953.

CHAPTER –VIII

Payment of compensation under Chapter VIII of the Act.

65. Manner of ascertaining excess payment under section 57 : *(1)* Where a rent-receiver holds rent-receiving interests in more than one area for which separate Compensation Assessment-rolls are prepared, no deduction shall be made under sub-section (2) of section 57 in the case of the first payment of compensation under a Compensation Assessment-roll in respect of such interests, but the Revenue Officer shall, immediately on such payment, forward a copy of such roll, with the details of the deductions made under sub-section *(1)* of section 58 and the amount of compensation actually paid under that section, to the Revenue Officers of other areas where such rent-receiver holds rent-receiving interests, or, if no Revenue Officer has been appointed at the time for any such area, to the Director of Land Records and Surveys for transmission to the Revenue Officer of such area when appointed.

(2) Before making any subsequent payment o compensation to such rent-receiver for his rent-receiving interests in any area under a different Compensation Assessment-roll the Revenue Officer shall ascertain, with reference to the information furnished to him under sub-rule *(1)* and also sub-rule (3), if any, by the Revenue Officers of other areas, if any excess payment has been made in such other areas according to sub-section *(1)* of section 57 and, if so, shall deduct the amount of such excess from the amount of compensation payable to such rent-receiver under such roll in respect of such interests :

Provided that before making any such deduction, the Revenue Officer shall issue a notice to the rent-receiver allowing him at least 15 days time to show cause, if any, against such deduction.

(3) As soon as any subsequent payment of compensation is made to such rent-receiver under a Compensation Assessment-roll in respect of his rent-receiving interests, the Revenue Officer making such payment shall forward a copy of

the roll, with the details of the deductions made under sub-section (2) of section 57 and sub-section *(1)* of section 58 and the amount of compensation actually paid under section 58, to the Revenue Officers of other areas where such rent-receiver holds rent-receiving interests in respect of which the intimation of payment of compensation has not been received under sub-rule *(1)* or this sub-rule, or, if no Revenue Officer has been appointed at the time for any such area, to the Director of Land Records and Surveys for transmission to the Revenue Officer of such area when appointed.

(4) When the Revenue Officer decides to make any deduction under sub-rule (2), he shall record an abstract of the reasons for such decision.

66. Co-ordination of activities of Revenue Officer : *(1)* The Director of Land Records and Surveys shall lay down a suitable procedure for co-ordinating the activities of the Revenue Officers working in different areas to guard against the overpayment of compensation in any area and also against the deduction of any amount under sub-section (2) of section 57 more than once in respect of the same excess payment.

(2) When the stage of payment of compensation for rent-receiving interests of the same rent-receiver in different areas is reached at the same time, the payment of compensation under the Compensation Assessment-rolls in respect of all such areas may be entrusted to the Revenue Officer of one of such areas.

67. Appeal under section 57 (2) : *(1)* Every appeal under the second proviso to sub-section (2) of section 57 shall be in writing and shall be accompanied by a certified copy of the order appealed against.

(2) Every such appeal shall lie to the Direcctor of Land Records and Surveys who has been declared under rule 46 to be the Superior Revenue Authority for hearing such appeals.

CHAPTER– IX

Computation of the arrears of rent and cesses and payment of fifty *per centum* of such arrears to the out-going rent-receivers under Chapter IX of the Act.

68. Submission of statement of arrears : *(1)* As soon as possible after the date on which the interests of any rent-receiver in any land vest in the Provincial Government under clause *(a)* of sub-sectioin (4) of section 3 or under clause *(1)* of section 44, the Revenue Officer shall serve a notice on him, in the Form No. XII appended to these rules, directing him to submit a statement, in the form prescribed in such notice, showing all arrears of rent, and cesses and interest, if any, accrued thereon, which became due to him in respect of such interests for any period previous to the said date and are not barred by limitation.

[5]*(1a)* Any such notice relating to the interests of any rent-receiver which have vested in the Provincial Government under clause *(a)* of sub-section (4) of section 3, shall be deemed to be a notice under item *(b)* of sub-section *(1)* of section 4 and shall be issued thereunder.

(2) The statement referred to in sub-rule *(1)* shall be submitted within sixty days from the date of the service of the notice under the said sub-rule or within such further time, not exceeding fifteen days, as may be allowed by the Revenue Officer, on application of the rent-receiver concerned.

[6](3) If any rent-receiver fails to submit such statement within the time referred to in sub-rule (2), it shall, for the purpose of computation under section 67, be deemed that no such arrears were due to him and consequently he shall not be entitled to any compensation under that section.

69. Verification of the statement of arrears : *(1)* On receipt [6]of the statement of arrears under rule 68, the Revenue Officer shall send copies thereof to the local *tahsil* Officers for

5. Inserted by notification No. 6334 L.R., dated the 4th May, 1954.
6. Amended by notification No. 9027 L.R., dated the 2nd June, 1955.

verification by examining the tenants from whom the arrears have been shown as due and for returning the copies with the reports of verification noted in the remarks column.

[6](2) If the Revenue Officer considers that it will not be practicable to proceed under sub-rule *(1)*, he may, instead of proceeding under that sub-rule, call for necessary evidence and verify such statement himself and for this purpose he may cause a notice in the Form No. XXIIA appended to these rules to be served on the tenants concerned.

70. Compensation of the arrears and the amount of compensation payable under section 67 : *(1)* [7]After verification under rule 69, and after giving the rent-receiver an opportunity of being heard, the Revenue Officer shall make necessary correction in the statement and furnish a copy of the statement so corrected to the rent-receiver.

(2) If, in the course of the realisation of the arrears, it is found that any amount was worngly shown as due to the rent-receiver in the statement as corrected under sub-rule *(1)*, the Revenue Officer shall make further correction in the statement and inform the rent-receiver of such correction.

(3) A total sum equivalent to fifty *per centum* of the total amount of the arrears [8]excluding interest shown in the statement corrected under sub-rules *(1)* and (2) shall, [8]subject to proviso to section 67 be payable to the rent-receiver as compensation under that section.[8]

[8](4) Before making any deduction of Government dues under the proviso to section 67, the Revenue Officer shall issue a notice to the outgoing rent-receiver concerned allowing him at least fifteen days' time to show cause, if any, against such deduction.

71. The instalments in which the compensation shall be paid under section 67 and the manner of such payment : *(1)* The sum payable as compensation under sub-rule (3) of rule 70 shall be paid in three annual instalments, the first instalment being paid within two years from the date referred

7. Amended by notification No. 8218 L.R., dated the 14th May, 1955.
8. Notification No. 9107 L.R., dated the 25th July, 1953.

to in sub-rule *(1)* of rule 68 and the second and the third instalments within three and four years respectively from the said date.

(2) In the first two instalments, fifty *per centum* of the amounts actually collected under section 62 on account of the arrears [8]referred to in sub-rule (3) of rule 70 shall be paid, and the balance of the total compensation payable under the said sub-rule shall be paid in the third instalment.

(3) Payments under this rule may be made [9][by the Revenue Officer] to the rent-receiver entitled thereto or to any person duly authorised by him in writing to receive such payment or, on the written request of the rent-receiver, the amount paybale may be remitted to him by postal money-order, the cost of remittance being met out of such amount.

72. The Revenue Officer to take prompt action : The Revenue Officer shall take prompt action under rules 68, 69 and 70, bearing in mind the provision of section 68, and take action under the Bengal Public Demands Recovery Act, 1913, for the realisation of the arrears before they are barred by limitation.

9. The words within square brackets were inserted by notification No.468 L.R. dated the 13th April, 1960, published in the Dhaka gazette, Part 1, dated the 28th April, 1960.

[10] CHAPTER -IXA

Recovery of arrears of rents and cesses due to the outgoing rent-receivers under the special provisions in Chapter IXA of the Act.

72A. Accounts of arrear collected by Provincial Government under section 68D : When the Provincial Government grants an application made by a rent-receiver under sub-section *(1)* of section 68D, then as soon as may be, but not later than six months, after the expiry of every agricultural year, an account of the amount of arrears of rent and cesses together with interest thereon due to the rent-receiver and collected by the Provincial Government during that year under sub-section (3) of the said section shall be sent by registered post to the rent-receiver under sub-section (4) of that section.

CHAPTER -X

Scaling down of the debts of rent-receivers under Chapter X of the Act.

73. Manner of making an application under section 70 *(1)* : An application under sub-section *(1)* of section 70 shall be made in writing and shall be accompanied by a statement, in the form No. XIII appended to these rules, showing all his debts which are liable to be scaled down under the said sub-section and all his income from sources, other than interests in land during the last five years and other particulars specified in the form. The application shall also be accompanied by copies of the last five years' income-tax demand notices, if any, in respect of such income.

10. Inserted by notification No.22222 L.R., dated the 30th December, 1957.

74. Calculation of net annual income under section 70 (1): For the purpose of sub-section *(1)* of section 70,—

(a) the net annual income from the interests in lands acquired under the Act, other than *khas* cultivable waste lands not bearing any profit and *khas* lands covered by buildings, shall be the net annual income or profit or annual letting value, as the case may be, determined in respect of such interests in the Compensation Assessment-roll under the provisions of the Act;

(b) the net annual income from *khas* lands not acquired under the Act, other than *khas* cultivable waste lands not bearing any profit, vacant non-agricultural lands and lands covered by buildings, shall be calculated in the manner laid down in sub-section (3) of section 39 and rule 53;

(c) the net annual income from *khas* cultivable waste lands not bearing any profit, whether acquired under the Act or not shall be calculated at such amount, not exceeding rupees three per acre, as the Revenue Officer may think reasonable;

(d) the net annual income from any *khas* vacant non-agricultural land not acquired under the Act shall be calculated at its annual letting value determined in the manner laid down in sub-rule *(1)* of rule 55, less the amounts of rent, cesses and taxes payable in respect thereof;

(e) the net annual income from a building and the land covered by it, whether acquired under the Act or not, shall be calculated at their annual letting value or, if they are not let out, at the annual rent which they would, in the opinion of the Revenue Officer, fetch, if let out, less the amounts payable as revenue or rent, cesses and taxes in respect thereof and the cost of collection of rent, if any, for the lessee;

(f) the net annual income from properties not acquired under the Act, other than interests from lands or buildings, and the net annual income from other sources shall be calculated by the Revenue Officer at such amount as he considers reasonable after considering the statements filed by the indebted rent-receiver under rule 73 and also by his creditors, if any, and making such other enquiries, if any, as

he thinks fit and also after giving the indebted rent-receiver and his creditors an opportunity of being heard.

75. The manner of detrmination of the extent reduction in net income : *(1)* For the purpose of determining under sub-section (3) of section 70, the extent of reduction in the net annual income from any interest suffered by a rent-receiver as a result of the acquisition of such interest under the Act, the Revenue Officer shall first determine the net annual income from such interest according to the provisions of rule 74 and then find out the amount of compensation assessed for such interest in the Compensation Assessment-roll.

(2) The difference between the amount of the net annual income determined for such interest under sub-rule *(1)* and an amount calculated at three *per centum* of the amount of compensation assessed for such interest in the Compensation Assessment-roll shall be deemed to be the extent of reduction in the net annual income from such interest suffered by the rent-receiver as a result of the acquisition of such interest under the Act.

76. The manner of publication of a notice under section 71 (2) and the form of the statement referred to therein : *(1)* The notice referred to in sub-section (2) of section 71 shall be in the Form No. XIV appended to these rules.

(2) The statement referred to in the said sub-section shall be in the Form No. XV appended to these rules and shall contain the particulars specified therein.

(3) The notice shall be published in the *Official Gazette* and also by posting a copy thereof on the notice boards in the offices of the Collector and the Judge of the district and of the Sub divisonal Munsiffs of the sub-division in which the office of the Revenue Officer publishing the notice is situated. In addition, the notice may be published in such newspapers in the approved list of Government as the Revenue Officer thinks fit.

(4) A copy of such notice shall also be served on every creditor whose names and addresses are furnished with the application under sub-section *(1)* of section 70.

(5) The statement referred to in sub-rule (2) shall be submitted by every creditor within a period of three months from the date of the publication of the notice under sub-rule (3) in the *Official Gazette* :

Provided that the Revenue Officer may, in his discretion, allow any creditor such further time for submission of the statement as he thinks fit.

77. Preparation of the draft and final debt settlement rolls : *(1)* When the Revenue Officer has modified the statements of debts under sub-section (4) of section 71 and has determined, under rules 74 and 75, the net annual income of the indebted rent-receiver from various sources and also the extent of reduction in the net annual income suffered by him as a result of the acquisition of his interests under the Act, the Revenue Officer shall prepare a draft Debt Settlement Roll in the Form No. XVI appended to these rules and send a copy thereof, with a notice to the indebted rent-receiver and the creditor concerned informing them that they may file their objections, if any, against any entry in, or omission from, such roll within thirty days from the date of receipt of such notice.

(2) After considering the objections, if any, filed under sub-rule *(1)* within the period referred to therein and after giving the indebted rent-receiver and the credtiors concerned an opportunity of being heard, the Revenue Officer shall draw up the final debt settlement roll in the same form and send a copy thereof to the indebted rent-receiver and the creditors concerned.

78. Period within which an appeal under section 71(6) shall lie: An appeal under sub-section (6) of section 71 shall be presented within 30 days from the date of the order appealed against and shall be accompanied by a certified copy of such order.

79. Manner of recovery of debts referred to in section 71(1) : A creditor, entitled under the final debt-settlement roll, as modified by the decision, if any, of the Special Judge under sub-section (6) of section 71, to recover any amount from the compensation money payable to the indebted rent-receiver,

shall apply to the Revenue Officer, making payment of such compensation under section 58, for payment to him of such amount by deducting it from such compensation and the Revenue Officer shall, thereupon, deduct and pay the amount accordingly.

80. Payment of cost and process fees for the publication and service of notices : *(1)* The cost of publication of the notice under sub-rule (3) of rule 76 and process fees for the service of the notices under sub-section (4) of section 71 and the rules in this Chapter shall be paid by the indebted rent-receiver concerned.

(2) The process fees referred to in sub-rule *(1)* shall be paid according to the scale specified in rule 16.

(3) The payment of costs and process fees under this rule shall be made in court-fee stamps.

CHAPTER -XI

Miscellaneous.

81. Power of Revenue Officers to enter into any building: Subject to the provision of sub-section (5) of section 4, a Revenue Officer shall not, in exercise of the power conferred by section 73, enter into any building or upon any enclosed court-yard or graden attached to any building, except with the consent of the inmate or occupier thereof, or if such consent is refused, except after giving such inmate or occupier twenty-four hours' notice.

82. Service of notices where no other mode of service is provided in the Act or these rules : Except as otherwise provided for by the Act or by these rules, service of notice shall be effected in the manner provided for the service of summons on a defendant under the Code of Civil Procedure, 1908, or by registered post or under certificate of posting; and publication of a proclamation or general notice to a number of persons holding different interests in the same village shall be made by proclaiming it by beat of drum and also by posting it in the presence of not less than two persons, on some conspicuous place in the village.

83. Settlement of land vested in the Provincial Government : Subject to the provisions of section 76 and to any special order that may be issued by the Provincial Government in this behalf, settlement of lands vested in the Provincial Government under the provisions of the Act shall be made in accordance with the rules for the time being in force for the settlement of other lands belonging to the Provincial Government.

Form No. 1

(Rule 3)

Notification

No-----------------date-----------------In exercise of the power conferred by sub -section (1) of section 3 of the East Bengal State Acquisition and Tenancy Act,1950 (East Bengal Act No. XXVII of 1951). it is hereby notified for the information of all

concerned that the Governor is pleased to acquire, with effect from the --- all interests of the rent-receiver (s) named in Column 1 of the Schedule below the estate (s) and/or Taluk (s) and/or tenure (s) and/or holdings (s) and/or tenancies), the particulars whereof are given in Column 2 of the Schedule against his/her/its/their name (s), including all his/her/its/their interests in all sub-soil and rights to minerals in such estate (s) and/or Taluk (s) and/or tenure (s) and/or holding (s) and/or tenancy (ies) :

State Acquisition Rules, 1951

Schedule

Column 1	Column 2 Particulars of the estate(s) and/or Taluk(s) and/or tenures) • and/or holding(s) and/or tenancy(ies).			
Name and address of the rent-receiver(s)	(a) Name and/or number and/or other description	(b) Extent of share, if known	(c) District (s), Thana (s) and Mauza(s) in which situated as far as known	(d) Other particulars, if any.

By order of the Governor

(signature)

(Designation)

Form No. II

(Rule 3)

Notification

No ------ date ------ in exercise of the power conferred by sub-section (2) of section 3 of the East Bengal State Acquisition and Tenancy Act 1950 (East Bengal Act No. XXVIII of 1951), it is hereby notified for information of all concerned that the Governor is pleased to acquire with effect from the ---- the land(s) specified in column 2 of the Schedule below in the khas possession of the person(s) mentioned against is/then in Column 1 of the schedule :

Schedule

Column 1	Column 2							
	Specification of the land(s)							
Name and address of the person(s)	(a) GS Plot No. or other description.	(b) Area	(c) Khatian No.	(d) Mauza with J.L. or R.S. No.	(e) Thana	(f) District	(g) Estate, Taluk or tenure to which the land appertains.	(h) Class to which the land belongs according to section 39

By order of the Governor

(signature)

(Designation)

NB.—The alternatives which are not applicable in any particular case should be struck off.

Form No. IIA.

(Rule 3.)

Notification

No .... date................

In exercise of the power conferred by sub-section (1) of section 3 of the East Bengal State Acquisition and Tenanc Act, 1950 (East Bengal Act No. XXVIII, of 1951, it is hereby notified for the information of all concerned, that the Governor, is pleased to acquire with effect from the (date) .... in interests of all rent-receivers in their respective estates, taluks, tenures, holdings and tenancies situated in (area) .... including their interests in all subsoil and rights to minerals in such estates, taluks, tenures, holdings and tenancies, except (exception, if any, to be mentioned)...... tenancies, "except..................

By order of the Governor.

Strike out if not applicable

Form No. IIB

(Rule 3.)

Notification

No .... date................

In exercise of the power conferred by sub-section (2) of section 3 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951), it is hereby notified, for the information of all concerned, that the Governor is pleased to acquire with effect from (date) .... all lands in the khas possession of all rent-receivers situated in area .... except (exceptions, if any, to be mentioned) ....

By order of the Governor

Strike out if not applicable

Form No. III

(Rule 4.)

Proclamation

No .... date................ It is hereby proclaimed for the information of all concerned that, by the notification .... dated the .... published at pages (s) .... Part I of the Dacca Gazette of the .... the Provincial Government have acquired, under the provisions of sub-section (1) of section 3 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act, No. XXVIII of 1951), all rent-receiving interests of .... (name and address of the rent-receiver (s) in the .... (description of estates (s) and/or Taluk (s) and/or tenure(s) and/or holding(s) and/or tenancy (ies)] with effect from the .... 19....... (hereinatter referred to as the "notified date") and, as such, under the provisions of sub-section (4) of the said section, all tenants holding lands in such estate(s) and/or Taluk(s) and/or tenure(s) and/or holding(s) and/or tenancy(ies) directly under the said [name of the rent-receiver(s) .... have become tenants directly under the Provincial Government with effect from the notified date and are liable to pay to the Provincial Government from the said date all rents and cesses payable in respect of the lands so held by them.

It is further proclaimed that all arrears of rent and cesses with interest, due to the said [name of the rent-receiver(s).............for any period previous to the notified date in respect of his/her/its their interest which have been acquired as aforesaid are under sub-section (4) of section 3 of the said Act, payable to the Provincial Government with effect from that date, and to none else.

All concerned are therefore, advised to pay rents and cesses accordingly and warned that any payment made to any person other than the Provincial Government in contravention of the provisions of sub-section (4) of section 3 of the aforesaid Act will not operate as valid discharge and will not be recognised by the Provincial Government.

Dated the .... Revenue Officer.

NB–The alternatives which are not applicable in any particular case should be struck off.

Form No. IIIA

(Rule 4A.)

Notice

To..

(name of the rent-receiver)

....

(Address)

Under section 3A of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), you are hereby directed to furnish to (name of the officer) ....at (name of the place)....................by the (date) ....

(i) a separate return in respect of each of such estates, Taluks, tenures, holdings and tenancies as may be held by you in the Province of East Bengal in the form given below showing the particulars specified therein, and

(ii) a list of collection papers for the last .... years relating to each of the villages shown in column (ii) of the table in item 7 of the return.

Revenue Officer

Dated the ....

Form of Return

1. Description of the estate/ Taluk/ tenure/ holding/ tenancy.........
2. Total area of the estate/ Taluk/ tenure/ holding/ tenancy (in acres)..........
3. Share of the rent-receiver in the estate/ Taluk/ tenure/ holding/tenancy
4. Amount payable by the rent-receive in respect of the estate/Taluk/ tenure/holding/tenancy annually on account of–

	Rs.	a	p
(i) Land revenue or rent	..	..	
(ii) Road and PW cesses/local rate	..	..	
(iii) Education Cess	..	..	
Total	..	..	

5. The name of the Collectorate where or the name and address of the landlord to whom, the amounts mentioned in them 4 are payable :

6. Names and addresses of all co-sharers having joint collection with the rent receiver and their respective shares in the estate/Taluk/tenure/holding/tenancy.

Name (i)	Address (ii)	Share (iii)

7. Particulars of the village in which the lands of the estate/Taluk/tenure/"holding/tenaney are situated—

Serial No.	Name of the village	JL or RS No.	Thana	District	Reference to the list of collection papers	Remarks
(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vi)

8. The area and description of all lands in the Khas possession of the rent-receiver in the estate/Taluk/tenure/"holding/tenancy—

Serial No.	Touzi No.	CS plot No. or other description	Name of the village	JL Or RS No.	Thana	District	Khatian No. of the plot	Khatian No. of landlord	Area of the plot	Class of the land according to section	Description of any user that the public may have in the land by natural or customary right or right of easement
(i)	(ia)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)

9. (Any other information that the Revenue Officer may deem necessary).............................

Form No. IV

(Rule 5)

Notice

To...
(Name of the rent-receiver)

....
(Address)

Whereas by the notification No. .... dated the .... published at page(s) .... Part-I of the Dacca Gazette of the .... the Provincial Government have acquired, under the provisions of sub-section (I) of section 3 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), all your rent-receiving interests in the [description of the estate(s) and/or Taluk(s) and /or tenures(s) and/or holding(s) and/or tenancy (ies)........... with effect from the (notified date).............

You are hereby directed to furnish to (name of the officer)... at (name of the place)................ by the (date) ....

(i) and return is respect of (each of) the said estate(s) and/or Taluk(s) and/or tenure(s) and/or holdings(s) and/or tenancy(ies) (separately) in the form given on the reverse showing the particulars specified therein.

(ii) a list of collection papers in support of the annual demands in columns (vi) to (viii) of the table in item 7 of the return, and

(iii) the papers and documents mentioned in the schedule below and also to hand over all other papers of your Sherista relating to the said estate (s) and/or Taluk(s) and/or tenure(s) and/or holding (s) and/or tenancy(ies) to (name of the office)............. at (name of the place).................by the (date)..................

Schedule

Dated the ....Revenue Officer.

NB—The alternatives which are not applicable in any particular case should be struck off.

(Reverse)

Form of Return

1. Description of the estate/ Taluk/ tenure/ holding/ tenancy

2. Total area of the estate/ Taluk/ tenancy/ holding/ tenancy (in acres)

3. Share of the rent-receiver in the estate/ Taluk/ tenure/ holding/tenancy

4. Amount payable by the rent-receiver in respect of the estate/Taluk/ tenure/holding/tenancy annually on account of—

(i) Land revenue or rent Rs.

(ii) Road and PW cesses/local rate

(iii) Education Cess

Total...

5. Name and address of the landlord to whom the amount mentioned in item 4 payable—

6. Names and addresses of all co-sharers having joint collection with the rent-receives and their resective shares in the estate/Taluk/tenure/ holding/tenancy. Name (i) Address. (ii) Share (iii)

7. Names of the villages in which the lands of the estate/Taluk/tenure/holding teriancy are situated and the total annual demand of rent and cesses of each village payable to the rent-receiver or where the rent-receiver has joint collection with other co-shares, to all of them jointly :

Schedule

Serial No. (i)	Name of the village (ii)	JL or RS No. (iii)	Thana (iv)	District (v)	Annual demand of-				Reference to the list of collection papers (x)	Remarks (xi)
					Rent. (vi)	Road and PW. cess/local rate (vii)	Education cess. (viii)	Total (ix)		
						Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p	

8. The area description of all lands in the Khas possession of the rent-receiver in the estate/ Taluk/ tenure/ holding/ tenancy :

Serial No. (i)	Touz No. (ia)	C.S Plot No. or other description (ii)	Name of the Village (iii)	J.L. or R.S. No. (iv)	Thana (v)	District (vi)	Khatian No. of the Plot (vii)	Khatian No. of landlord (viii)	Class of the land according to section 39.	Description of any user that the public may have in the land by natural or customary right or easement. (x)

Any other information that the Revenue Officer may deem necessary.

Form No. V

(Rule 7)

Notice

To...

(name of the rent-receiver or all grades of rent-receivers) of Mauza .... JL No. ....PS ....District.............

(Address)

Please take notice that under section 5 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), the rent of each parcel of land, which is in your khas possession as appertaining to your estate(s)/taluk(s)/tenure(s)/holding (s)/tenancy(ies) since acquired under sub-section (1) of section 3 of the said Act, by Notification No........... dated .... has been determined and that a plot-wari or holding-wari rent-roll thereof has been duly prepared which shall remain open for your inspection at (place) .... from (date) to (date) .... during office hours.

Dated, the .... Revenue Officer.

NB-The alternatives which are not applicable in any particular case should be struck off.

Form No. VI

(Rule 10)

Notice

To..

(name of the rent-receiver)

....

(Address)

Please take notice that the amount of ad interim payment receivable by you for the year .... under sub-section (1)/(2) of section 6/sub-section (1)/(4) of section 6A of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), in respect of your rent-receiving interests in the estate(s) and/or taluks(s) and/or tenure(s) and/or holding (s) and/or tenancy (ies)/khas lands mentioned in the schedule below which were acquired under sub-section (1)/(2) of section 3 of the said Act by the notification No. .... dated....................published at page (s)..Part-I of the Dhaka Gazette of the .... has been determined as shown in that schedule and is ready for disbursement.

Schedule

(For ad interim payments under section 6 (1) or under section 6A(1)(ii)

Description of the estate, Taluk, tenure, holding or tenancy	Gross collection			Deductions					Net income	For ad interim payment under section 6A(1) (ii), net income after deduction of annuity	For ad interim payment under section 6A(1) (ii), compensation payable under section 37(1) for the net income in colums (10A)	The amount of ad interim payment at 1/3rd of the net income in column (10) or at 3 percent of the compensation in column (10Bo, as the case may be
	Rents	Cesses cr local rate	Total	Under section 6(3)(i)	Under section 6(3)(ii)	Under section 6(3)(iii)	Under section 6(3)(iv)	Total				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(10A)	(10B)	(12)
	Rs. a P	Rs. a P	Rs. aP	Rs. aP	Rs. aP	Rs. aP	Rs. aP	Rs. aP	Rs. aP	Rs. aP	Rs. aP	Rs. aP
Grand Total												

Schedule

For ad interim payments under section 6A (1) (i)

Description of the estate, Taluk, tenure, holding or tenancy	Gross assets determined under section 35(1)(a)			Deductions			
	Rents rate	Casses or local rate	Total	Under section 35(1)(b)(i)	Under section 35(1)(b)(ii)	Under section 35(1)(b)(iii)	Under section 35(1)(b)(iv)
1	2	3	4	5	6	7	8
	Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p
Grand Total							

			Amount or portion of the net income, if any, reserved in the deed for expenditure exclusively on charitable or religious purposes.	Actual expenditure exclusively on charitable or religious purposes	The amount of annuity admissible.
Under section 35(1)(b)(v)	Total	Net income			
9	10	11	12	13	14
Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p	Rs.a.p

Schedule

For ad interim payments under section 6(2) or under section 6A(4)]

CS plot No. or other description	Area	Khatian No.	Mauza with JL or RS No.	Thana	District	Estate, Taluk or tenure to which the land appertains	Class to which the land belongs according to section 39	The amount of compensation payable according to the princip les of section 39	The amount of ad interim payment at 5 percent or 3 per cent, as the case may be of the amount shown in col. (9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Grand Total									

Dated the ....

Revenue Officer

N.B.—The alternatives which are not applicable in any particular case should be struck off.

Form No. VII

(Rule 15)

Application

To

The Collector of ....

Name/names and address/Name/Names and address/ addresses

addresses of the applicant/of the opposite party/ parties ...

applicants ....

tenant (s)/landlords(s). tenant(s)/Landlord(s).

Whereas the application(s)/opposite party/paries has/have, under sub-section(1) of section 11 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), acquired a right of occupancy in the land(s) specified in the schedule below; and

Whereas no ageement could be reached between the applicant(s) and the opposite party/parties as to the fair and equitable rent payable by the applicant(s)/opposite party/parties to the opposite party/parties/applicant (s) in respect of such land(s) under the provisions of the said sub-section;

The applicant(s), therefore, pray(s) that the fair and equitable rent so payable for such land(s) may be determined by the Collector under the provisions of sub-section (2) of section 11 of the said Act.

Schedule.

Serial No.	C.S. Plot No. or other description	Khatian No.	Mauza with J.L. or R.S. No.	Thana	District	Area of the plot.	Nature of the land, main crops, if any, usually grown in the land, special facilities of irrigation and drainage, if any, available.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Dated the .... [Signature of the applicant(s).)]

NB- The alternatives not applicable should be struck off.

Form No. VIII
(Rule 15)
Application

To
The .... Court
Name(s) and address(es) Name(s) and address(es) of the opposite Party/parties
of the applicant (s)
....
....
tenant(s)/landlord(s) tenant(s)/landlord(s)

Whereas the opposite party/parties/applicant(s) has/have his/her/their homestead within the homestead of the applicant(s)/opposite party/parties and whereas the oposite party/parties/applicant(s) held his/her/their said homested under the applicant(s)/opposite party/parties till the date of commencement of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), free of rent in consideration of service to be rendered as........

It is prayed under sub-section (1) of section 12 of the said Act that an onder may be made under sub-section (2) of the said section directing the removal of the said homestead so held by the opposite party/parties/applicant(s).

Whereas the total quantity of cultivable land held by the applicant(s) as an occupancy raiyat/occupancy raiyats is less than five standard bighas as described in the schedule below/no cultivable land is held by the applicant(s) as an occupancy raiy at/occupancy raiyats, it is further prayed that a reasonable compensation may be assessed and ordered to be paid to the application(s) be the opposite party/parties under the proviso to sub-section(2) of section 12 of the said Act.]

The description of the homestead, the removal of which is prayed for, is given below.

Description of the homestead.

1. Village and thana in which the land on which the homestead stands is situated.
2. CS Plot No. and Khatian No. of the land and the name of the estate and No. of the tauzi to which the land belongs.
3. Area of the land covered by the homestead.

4. Description of the structures on the homestead :-
   (a) number of structures including compound walls,
   (b) length, breadth and height of each structure and the materials with which it is made.

Schedule

Serial No. (1)	C.S. Plot No. or other description. (2)	Khatian No. (3)	Mauza with J.L. or R.S. No. (4)	Thana (5)	District (6)	Area of the plot. (7)

Dated the ....

[Signature of the applicant (s)].

N.B-The alternatives not applicable should be struck off.

Form No. IX
(Rule 15)
Application

To
The Collector of ....
Name(s) and address(es) Name(s) and address(es)
of the applicant(s) of the opposite party/parties
....
tenants(s) landlord(s) ....

Whereas the applicant(s) was/were ejected on the ....by the opposite party/parties, otherwise than by a decree or order of a Civil Court or an order of the Collector or of any Revenue-Officer empowered by the Collector, from the agricultural and/or horticultural land(s), specified in the schedule below, held by the applicant(s) under the opposite party/parties free of rent in consideration of service to be rendered as ....

It is prayed under sub-section (1) of section 13 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951, that an order may be passed by the Collector under sub-section (2) of the said section restoring such land(s) to the applicants(s).

Schedule

Serial No. (1)	C.S. Plot No. or other description. (2)	Khatian No. (3)	Mauza with J.L. or R.S. No. (4)	Thana (5)	District (6)	Area of the plot. (7)

Dated the ....

[Signature of the applicant (s)].

NB-The alternatives not applicable should be struck off.

Form No. X
(Rule 45)
Compensation assessment-Rol
Part A.
For Rent-receiving Interests

Mouza.. Thana..

JL No.. District..

Serial No.	Name of the rent-receiver	Class of interest of the rent-receiver	Khatian No. of the rent-receiver	Khatian No. of the superior interest	Total area (of the rent-receiver's Khatian)			Total amount payable by the rent-receiver				Share of the rent-receiver	Area in khas Possession in the rent-receiver	Area sublet in the share of the rent-receiver	of the immediately Subordinate			Total cesses	
					Khas	Sublet	Total	Revenue or rent	Road & PW cesses or local rates	Education cess	Total				Khatian No.	Total area	Total rent	Road and PW cesses or local rates	Education cess
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

Tenancies		Gross assets of rent-receiver			Deductions						Net income of rent-receiver (difference between the amounts in cols. 25 and 31) or the amount of malikansa in the case of a recusant proprietor.	Rate of compensation payable	Amount of compensation payable	Amount of compensation, if any, payable under Part B	Total amount of compensation payable under parts A and B. (Cols. 34 and 35)	Remarks
Total of columns 18, 19 and 20	Rent and cesses in the share of the rent-receiver	Total rents and cesses payable by immediately subordinate tenants to the share of the rent-receiver (vide col. 22)	If the rent-receiver is a proprietor or tenure-holder the total rent determined under section 23 for such of the khas lands in his share as he retains possession of under section 20	Total	Revenue or rent and cesses payable to superior interest according to rent receiver's share	Agricultural income tax (if any) payable by the rent-receiver	Income-tax (if any) payable by the rent-receiver in respect of non-agricultural land	Expenditure (if any on account of maintenance of any irrigation or protective works	Cost of collection of rent in the rent-receiver's share	Total						
21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37

Part - B
For khas lands

Serial No.	Name of the person whose khas land comes under acquisition and his serial No. in part A if any	Class of interest	khatian No.	Total area of khas land			Classification of land coming under acquisition according to section 39, area and other particulars of each class of land and the compensation payable												
							Class (a)				Class (b)				Class (c)(i)				
				Area he retains possession of under section 20	Area coming under acquisition	Total	Total area	Plot Nos.	Total net annual profit	Total amount of compensation payable	Total area	Plot Nos.	Total net annual profit	Total amount of compensation payable	Total area	Plot Nos.	Total net annual profit	Annual raiyati rent for an equal area of cultivated land in the neighbourhood	Total amount of compensation payable
1	2	3	4	5	6	7	8(a)	8(b)	8(c)	8(d)	9(a)	9(b)	9(c)	9(d)	10(a)	10(b)	10(c)	10(d)	10(e)

Class(c)(ii)			Class(d)				Class(e)				Class(f)							Total amount of compensation payable for the lands and buildings	Grand total of the area under requisition	Grand total of the amount of compensation payable.	Remarks
											Lands				Buildings						
Total area	Plot Nos.	Total amount of compensation payable	Total area	Plot Nos.	Total net annual profit.	Total amount of compensation payable	Total area	plot nos	Total annual letting value	Total amount of compensation payable	Total area	Plot Nos.	Total annual letting value	Total amount of compensation payable	Cost of construction	Depreciation	Total amount of compensation payable				
11(a)	11(b)	11(c)	12(a)	12(b)	12(c)	12(d)	13(a)	13(b)	13(c)	13(d)	14(a)	14(b)	14(c)	14(d)	14(e)	14(f)	14(g)	14(h)	15	16	17

Form No. X(1)

[rule 62B (1)]

Compensation assessment roll

Part A

For rent-receiving Interest.

Mauza.. Thana..

JL No.. District..

Serial No.	Name of the rent-receiver	Class of interest of the rent-receiver	Khatian No. of the rent-receiver	Khatian No. or Tauzi No. or other particulars of superior interest	of the rent-receiver's Khatian									Of the immediately		
					Total area				Total amount payable by the rent-receiver							
					Khas		Sub-let	Total	Revenue of rent	Road and PW cesses or local rents	Education cesses	Total		Khatian or Karcha No.	Total area	Total rent determined
					In khas possession	Right of Easement for public										
1	2	3	4	5	6(a)	6(b)	7	8	9	10	11	12		13	14	15

Subordinate tenancies					Deductions											
Total cesses																
Road and PW, cesses or local rates	Education cess	Total of columns 15, 16 and 17	If the rent-reciver is a proprietor or tenure holder, the total rents and cesses determined u/s 5 for such khas lands in his share as he retains possession u/s 20	Total of columns 18 and 19	Revenue or rent and cesses payably to superior interest according to rent-receiver's share	Agricultural income tax (if any) payable by the rent-receiver	Income-tax (if any) payable by rent-receiver in respect of non-agricultural lands.	Expenditure, if any, on account of maintenance of any irrigation or protective works.	Cost of collection of rent in the rent-receiver's share	Total	Net income of rent receiver (difference between the amounts in columns 20 and 26 or the amount of Malikana in the case of a recusant proprietor)	Rate of compensation payable	Amount of compensation payable	Amount of compensation, if any, payable under part "B"	Total amount of compensation payable under parts A and B (Total of columns 29 and 30)	Rmarks
16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32

Part B
For Khas Lands.

serial No	Name of the person whose khas land comes under acquisition and his serial No. in part A, if any	Cass of Interest	Khatian No	Total area of land khas			Classification of land coming under acquisition according to section 39, area, other												
							Class (a)				Class (b)				Class (c)(i)				
				Area he retains possession of under section 20	Area coming under acquisition	Total	Total area	Plot Nos.	Total net annual profit	Total amount of compensation payable	Plot Nos.	Total area	Total net annual profit	Total amount of compensation payble	Total area	Plot Nos	Total net annual profit	Annual raiyati rent for an equal area of cultivated land in the neighbourhood	Total amount of compensation payable
1	2	3	4	5	6	7	8(a)	8(b)	8(c)	8(d)	9(a)	9(b)	9(c)	9(d)	10(a)	10(b)	10(c)	10(d)	10(e)

Particulars of each class of land and the compensation payable

Class (c) (ii)			Class (d)				Class (e)				Class (f)								Grand total of the area under acquition	Grand total of the amount of compensation payable	Remarks
											Lands				Buildings						
Total area	PlotNos.	Total amount of compensation payable	Total area	Plt Nos.	Total net annual profit	Total amount of compensation payable	Total area	Plot Nos	Total net annual profit	Total amount of compensation payable	Total area	Plt Nos.	Total net annual profit	Total amount of compensation payable	Cost of construction	Depreciation	Total amount of compensation payable	Total amount of compensation payable for the lands and buildings			
11(a)	11(b)	11(c)	12(a)	12(b)	12(c)	12(d)	13(a)	13(b)	13(c)	13(d)	14(a)	14(b)	14(c)	14(d)	14(e)	14(f)	14(g)	14(h)	15	16	17

Form No. XI

(Rule 63)

[Form of application under sub-section (1) of section 52]

To

The Special Judge ....

1. Name of applicant ....
2. Particulars of the connected appeal/reference.............
3. Date of disposal of appeal/reference ....
4. Brief statement of the facts of the appeal/reference................
5. Findings of special Judge on facts ....
6. Question/questions of law involved in the appeal/reference.........
7. Decision of Special Judge on question/questions of law...........
8. The question/questions of law in respect of which a reference to High Court is sought ....
9. The applicant prays that, as required by section 52 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), a statement of the case be drawn up and referred to the High Court.................................

Date...

Signature of the applicant.

N.B-The alternatives not applicable should be struck off.

Form No. XII

(Rule 68)

Notice

To (name of the rent-receiver) ....

(address) ....

....

Whereas your rent-receiving interests in the estate(s) and/or taluk(s) and/or tenure(s) and/or holding(s) and/or tenancy(ies) specified in the Schedule below have vested in the Provincial Government under sub-section (4) of section 3/section 44 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951) with effect from the (date) .... and

Whereas all arrears of rent and cesses and interest thereon, if any, which became due to you in respect of such interests for any period previous to the said date and which are not barred by limitation have also vested in the Provincial Government under the aforesaid section with effect from that date.

You are hereby directed under section 4(1)(b) of the said Act to submit to this office a statement of such arrears and interest in the form prescribed on the reverse within sixty days from the date of the service of this notice.

Schedule

Description of the estate, taluk, tenure, holding or tenancy with khatian No. of the rent-receiver.	Extent of share	Name of the district, thana and mauza in which situated, with other particulars, if any

Dated the .... (Signature)

Revenue Officer.

(Reverse)

Statement

Description of the estate, taluk, tenure, holding or tenancy (with khatian No.) to which the arrears are

Name and address of the defaulting teant.	Description of the taluk, tenure, holding or tenancy from which the arrears are due				Amount of arrears (to be stated year by year)				Amount of Interest on the arrears	Amount of cost allowed by any decree	Total amount due	Share of the rent-receiver in the amount in column 12	Period to which the arrears relate	If any decree has been passed by, or any suit is pending in any court in respect of the arrears the name of the court and No. and year of the decree or suit	Remarks.
	Khatian No.	Mouza	Thana	District	Rent	Road and PW cesses of local rates	Education Cess	Total							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

Form No. XII A

[Rule 69(2)]

Notice

To (name of the tenant) ....

(address) ....

You are hereby directed to furnish to the undersigned within thirty days of the service of this notice, a true statement in the form prescribed on the reverse, with all supporting documents, in respect of all arrears of rent and cesses due from you on .... to those rent-receivers to whom you had been paying rent on account of the lands recorded in your name in the record-of-rights finally published on ..../on account of the lands in respect of which the interests of such rent-receivers were acquired under notification No.............Dated.................

2. A separate statement should be furnished in respect of each group of such rent-receivers.

(Signature)..............

Revenue Officer.

(Address) ....

Date ....

(Reverse)

Statements

Name and address of the superior landlord	Description of the taluk, tenure, holding or tenancy for which arrears are due				Amount of arrear due, (Year by year).			Total
1	2				3			4
	Khatian No.	Mauza.	Thana.	District,	Rent	Road and P.W. Cesses or local rates	Education Cess.	
	(a)	(b)	(c)	(d)	(a)	(b)	(b)	

Amount of interest on the arrears	Amount of cost allowed by any decree.	Total amount due.	Period to which the arrears relate.	If any decree has been passed by, or any suit is pending in any Court, the name of the Court and No and year of the decree or suit.	Remarks.
5	6	7	8	9	10

FORM No. XIII
(Rule 73)
Statement
Part A-Debts

Serial No.	Name and address of the creditor	Nature of debt	Registration No. and year and the date of execution of the debt document	Amount of debt outstanding			Whether secured or not	In the case of a secured debt, full particulars of the properties mortgaged or charged (in the case of anded interests Khatian Nos. Plot Nos, names of mauza, thana and district and other particulars sufficient to identify them in the record-of-rights to be given)	The date of publication, under section 42, of the Compensation Assessment-roll in respect to the applicants, interest or lands which have been acquired first under section 3 or 44 and the area (District, thana and mauza) in which such interests or lands are situated	If the applicant holds rent-receiving interests in lands in any other area or areas the name of such area or areas (District, thana and mauza)
				Principal	Interest	Total				
1	2	3	4	5	6	7	8	9	10	11

Part B

Income from sources other than interests in land

Serial No.	Source of income other than interest in land ie trade business employment investment, deposits in Bank, etc.	Places of trade business, employment, deposit in Bank, etc.	Income during the last five years										Particulars of the last five years, income-tax assessment, if any									
			1st year		2nd year		3rd year		4th year		5th year		year......		year......		year......		year......		year......	
			Gross	Net	Gross	Net	Gross	Net	Gross	Net	Gross	Net	Net income assessed	Tex imposed.	Net income assessed	Tex imposed.	Net income assessed	Tex imposed.	Net income assessed	Tex imposed.	Net income assessed	Tex imposed.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23

Form No. XIV
[Rule 76]
Notice

No .... Dated ....

Whereas (name), son of .... (father's name)............. of Village .... of thana .... of District .... has applied under sub-section (1) of section 70 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 195) for scaling down all his debts which are liable to be scaled down under that sub-section;

Notice is hereby given under sub-section (2) of section 71 of the said Act that every creditor, to whom the said (name) .... owns any debts which are liable to be so scaled down, is hereby called upon to submit to the undersigned, within theree months from the date of the publication of this notice in the official Gazette, a statement of such debts in the Form No. XV appended to the East Bengal State Acquisition Rules, 1951.

Every such creditor is hereby warned that if he fails to submit such statement in respect of any such debt within the aforesaid period of theree months, the liability of the said (name) .... to pay such debt shall be deemed to be extinguished under the provision of sub-section (3) of section 71 of the said Act.

Every such creditor may also along with the above statement submit a statement showing the estimated net annual income of the said (name) .... from each source other than land or interests in land, so far as is known to the creditor.

(Signature)
Revenue Officer.

Place and date...
....

FORM No. XV
(Rule 76)
Statement

Submitted in pursuance of the Notice No........... date.............Published in *Dhaka Gazette dated the ....

Name of the debtor..............son of ....of village..............

of P.S........... of district ....

Serial No.	Nature of debt	Registration No. and year and the date of execution of the debt document	Amount of debt outstanding Principal, Interest, Total	Whether secured or not	In the case of secured debt full particulars of the properties morfgaged or charged (in the case of landed interests, Khatian Nos. Plot Nos names of mouza, thana and district and other particulars sufficient to identify them in the record-or-rights to be given.
1	2	3	4	5	6

Form No. XVI
(Rule 77)
Debt Settlement Roll

Name of the Indebted rent-receiver..........son of..........
of village..........of thana..........of district..........

Serial No.	Name and address of the creditor	Registration No. and year and the date of execution of debt document.	Total amount of original debt outstanding including interest	Whether secured or not.	In the case of a secured debt, not actual income		In the case of an unsecured debt not annual income		In the case of a secured debt, the amount of the debt which has been apportioned on the income shown in column 6 and is to be scaled down in the case of a debt wholly secured by a mortgage or charge on the acquired interests, the entire amount of the debt shown in column 4 is to be scaled down and shown in this column.	In the case of an unsecured debt, the amount of the debt which has been apportioned on the income shown in column 8 and is to be scaled down.	In the case of a secured debt, the amount calculated at 3 per cent. of the compensation allowed for the acquired interests mortgaged or charged.	In the case of an unsecured debt, the amount calculated at 3 per cent. of the total compensation for all the acquired interests allowed.	Extent of reduction in the net income suffered by the rent-receiver.	The amount to which the debt is scaled down.	The amount recoverable from the compensation money.	Order of priority under section 70 (5) (c).	Remarks.
					From the interests mortgaged or charged which have been acquired	From the properties, if any, mortgaged or charged which have not been acquired	From all the interests of the debtor which have been acquired.	From the properties which have not been acquired and from other sources.									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

THE TENANCY RULES, 1954

CHAPTER I

Preliminary

1. Short Title.–These rules may be called the Tenancy Rules, 1954

2. Interpretation.–In these rules, unless there is anything repugnant in the subject or context,

(1) "The Act" means the State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), and

(2) "Section" means a section of the Act.

CHAPTER II

Incidents of raiyati holdings and transfer, purchase and acquisition of lands.

3. Abatement of rent on account of diluvion, under section 86.–(1) An Application under sub-section (I) of section 86 for abatement of rent shall be in Form No. 1 appended to these rules.

(2) When the entire land of a holding is diluviated, the entire amount of rent payable for such holding shall be abated and when only a part of a holding is diluviated, the amount by which the rent of the holding shall be abated shall bear the same proportion to the rent of the entire holding as the areas of the land diluviated bears to the area of the land comprised in the entire holding, provided that the rent assessed for the undiluviated part of the holding shall always be calculated to the nearest full and anna and pies shall be eliminated.

(3) The abatement shall take effect from the first day of the agricultural year in which the application for abatement is made or from the first day of the agricultural year following the year in which the land was diluviated, whichever is later.

4. Grant of certificates under sections 87 and 90 and form, and mananer of service, of notice under sub-section (3) of section 87.–(1) The authority for granting a certificate under the proviso to sub-section (2) of section 87 or under the proviso to sub-section (2) of section 90 or for giving the

permission under sub-setion (3) or sub-section (4) of sction 90 shall be the Collector or Additional Collector of the district. The certificate shall be in the Form No. II appended to these rules.

(2) The notice referred to in sub-section (3) of section 87 shall be in the Form No. III appended to these rules and shall be served in the manner provided for the service of a revenue process or by registered post.

5. Notices of transfer and process fees referred to in section 89.-(1) The notices of transfer under section 89 shall contain, so far as may be possible, the particulars given in the Form No. IV appended to these rules. The party concerned shall file before the registering Officer, Civil Court or Revenue Authority as the case may be one notice giving the particulars of the transfer and the correct postal address of the Revenue Officer and also, in cases coming under sub-section (4) of the said section the names of all co-sharer tenants who are not parties to the transfer, with correct postal addresses, and as many copies of such notice giving the said particulars as are necessary, in order that (two copies) may be sent to the Revenue Officer and also (one copy) to each such co-sharer tenant and one copy may be affixed in the Court House or in the Office of the Revenue Authority or of the Registering Officer, as the case may be. Provided that where several tenancies held with same co-sharer tenants are included in one document of transfer, all such tenancies may be included in one notice for each such co-sharer tenant.

(2) [Except in cases coming under sub-rule (3),] with cash copy of the notice meant for the serice on the Revenue Officer or a co-sharer tenant the party shall file—

(i) an envelope with the name and address of the party on whom the notice is to be served duly written thereon.

(ii) requisite postal stap for sending the notice by registered post with acknowledgement due together with an acknowledgement slip duly filled in, and–

(iii) a process fee of twenty-five paisa to be paid in court-fee stamp for meeting the cost of labour involved in sending the notice, maintenance of registers, etc.

(3) Where the Office of the Registering Officer, Civil Court or Revenue Authority and that of the Thana Revenue Circle Officer (collection) or the Thana Revenue Circle Inspector, as the case may be, are located at the same station of the thana where the property under transfer is situated, a process fee of Rs 1, to be paid in Court-fee stamp, shall be paid with each notice meant for service on the Revenue Officer.

(4) The Registering Officer, Civil Court or Revenue Authority, as the case may be, shall, in cases coming under sub-rule (2), forthwith serve the notices by registered post with acknowledgment due, and in cases coming under sub-rule (3), shall serve the notice by immediately sending them by messenger peons to the office of the Thana Revenue Circle Officer (collection) or the Thana Revenue Circle Inspector, as the case may be, and obtain acknowledgement therefor.

(5A) Procedure for taking possession of land vested in Government :-

(1) Where any land vests in the Provincial Government under sub-section (5) of section 90, the Deputy Commissioner shall cause a notice to be served upon the transferor and the transferee of the land intimating them about the vesting and declaring the intention to take possession of the land.

(2) Such notice shall state the particulars of the land vested and shall require transferor and the transferee to appear personally or by agent before the Deputy Commissioner at a time and place mentioned therein and to state their objections, if any, to the taking of possession of the land.

(3) The Deputy Commissioner shall after hearing the objections, if any, record his decision about the taking of possession.

(4) When the Deputy Commissioner has ordered taking possession of the land under sub-rule (3), it shall be lawful for him to enter the land taken possession thereof.

6. Surrender of holdings, and entry on holdings in which the interests of raiyats have been extinguished under section 92.-(1) The notice for the surrender of a holding under clause (b) of sub-section (1) of section 92 shall be in the Form No. V appended to these rules and given either

personally or by registered post with acknowledgement due or through the Civil Court in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908, on payment of the process fee prescribed in the rules made by the High Court. The notice shall reach the Revenue Officer at least three months before the end of the agricultural year.

(2) A notice for entry on a holding under sub-section (3) of section 92 shall be published by affixing a copy thereof each in the notice board of the office of the Revenue Officer and of the Union Board, Sarpanch or Village Panchayet. A copy of the notice shall also be published by beat of drum upon or near the holding concerned. Another copy of the notice, with the report of the serving officer thereon stating the fact of such publication, the date on which the publication at each such place was made and the names and address of the witnesses, if any, in whose presence the notice was so published, shall be returned to the Revenue Officer for record in his Office.

(3) The period to be specified in the notice referred to in sub-rule (2) for filling objections under sub-section 92 shall not be less than thirty days from the date of publication of the notice upon or near the holding concerned under the said sub-rule.

6A. Extinguishment of the interest of malik in a holding or part of a holding under section 93(2).-(1) When the interest of a malik in a holding or part of a holding is extinguished under sub-section (2) of section 93, the Deputy Commissioner may enter on the holding or part of the holding.

(2) Before entering on the holding or part of the holding, the Deputy Commissioner shall cause a notice to be served on both the sub-lessor and sub-lessee, with particulars of the holding or part of the holding vested in the Provincial Government under sub-section (2) of section 93, declaring his intention to so enter on it and specifying the reasons thereof, and also inviting objectins from them and shall consider any objections that may be submitted to him within the period specified in that behalf in the notice and shall record a decision.

7. Transfer of encumbrances under section 94.-The lands to be selected for the transfer of encumbrances under section 94 shall be approximately of the same market value as that of the original lands subject to such encumbrances and shall, as far as possible, be of the same nature. Before making such selection, the Revenue Officer shall give both the parties an opportunity of being heard.

CHAPTER III

Subdivision and Consolidation of Holdings

8. Application for subdivision of a holding under section 117.-(1) An application under sub-section (1) of section 117 shall contain the following particulars–

(a) Description of the holding.

(b) Area and plot numbers (with secific area of each plot) of the lands included in the holding.

(c) Name of the thana and mauza with J. L. No. in which the holding is situated.

(d) Annual rent and cesses of the holding.

(e) Name of the applicant with address and extent of his share in the holding and the plot or plots (with area) in his possession according to that share.

(f) The names and addresses of the remaining co-sharer tenants in the holding showing specific share against each and the plot or plots (with area) in their specific possession.

(2) Along with his original application, the co-sharers applicant shall file copies of the same for service on all co-sharers in the holding.

(3) On receipt of an application for subdivision of a holding, the Revenue Officer shall cause a notice to be served on the applicant and his co-sharer tenants informing them of the date and place fixed for hearing of the application and calling upon the co-sharers other than the applicant to file objections, if any, to the subdivision of the holding applied for. On the day so fixed the Revenue Officer shall hear all the co-

sharers or their representatives, receive relevant papers and documents, take evidence of possession and pass orders, allowing or rejecting the prayer for subdivision. The record of the proceedings shall contain brief summary of the evidence taken and the reasons for making the order. The application shall not be disposed of in the absence of any of the co-sharers or their representatives unless the Revenue Officer is satisfied that the notice was duly served on the persons concerned.

(4) When an order for subdivision of a joint holding is passed under sub-section (I) of section 117 the Revenue Officer shall cause such sub-division to be demarcated on the ground and also show the same on the çadastral survey map by assigning bata numbers of plots, where necesssary, and make corollary corrctions in the Plot Index and record-of-rights under his signature and official seal. Such demarcation on the ground shall be made in presence of all the parties interested with due notice to them.

9. Consolidation of holdings.–(1) An application for consolidation of holdings under sub-section (1) of section 119 shall be in the Form No. VI appended to these rules.

(2) The enquiry under sub-section (I) of section 120 may be made with reference to the relevant records and also locally if the Revenue Officer considers it necessary. When the Revenue Officer decides to make local enquiry he shall give previous notice thereof in the Village or villages concerned by beat of drum and allow the raiyats having lands in the locality to present to him their objection or suggettions in writing at the time of the enquiry.

(3) The superior Revenue Authority referred to in sub-section (1) of section 120 shall be—

(a) where the Provincial Government has made an order under clause (iii) of sub-section (1) of section 122f directing that the consolidation of holdings be effected in any particular area, the Secttlement Officer, Land Consolidation, of that area, and

(b) in any other case, and in respect of any other area, the Deputy Commissioner of the district.

(4) In examining agreed schemes for consolidation under section 121, the Revenue Officer shall have regard to the principles laid down in sub-sections (3), (4), (5), (6), (7), (8) and (9) of section 122 and sub-rule 5 of this rule.

(4a) In determining the amount of compensation referred to in sub-section (4) of section 122, or in transferring any encumbrance referred to in sub-section (1) of section 129, the Revenue Officer shall have regard to the market value of the land and the trees or other things, if any, attached thereto and also the suggesting of the Advisory Committee, if any, in this respect.

(5) In preparing sections for consolidation under sub-section(1) of section 122, the Revenue Officer shall also have regard to the distance between the homestead of a raiyat and the block of land proposed to be allotted to him and also the the irrigation, drainage and transport facilities originally enjoyed by him.

(5a) When the Provincial Government makes an order under clause (iii) of sub-section (1) of section 122 directing that consolidation of holdings be effected in any area, the Revenue Officer shall cause a proclamation to be made in the area to which the order relaties informing all concerned that the consolidation operation shall start in that area. Such proclamation shall be madde by beat of drum in the mauza concerned and, by affixing copies of the same at places of public assemblies, local markets, Government Offices, offices of the Union Councils and other conspicuous places in the area under consolidation. The Revenue Officer shall, also, either in the same proclamation, or at any time thereafter but before the draft publication of the scheme under sub-section (1) of section 123, by a general notice, to be published in the same manner, require all beneficiaries of encumbrances attached to any land in the area, to declare in writing before the Revenue-officer, their interests, within 15 days of the date of affixing the copy of the proclamation or general notice at the office of the Union Council within whose jurisdiction the land is situated.

(6) An Advisory Committee to be appointed under sub-section (2) of section 122 shall consist of non-officials, preferably persons of representative character, holding lands in, or having interest in the welfare of the locality. The number of the mambers of the Committee shall not exceed five.

(6a) In preparing a scheme for consolidation of holdings under sub-section (1) of section 122, the Revenue Officer may, of his own motion, or, on application, correct any entry in any record-of-rights, including map iff he is satisfied that such entry has been made owing to a bonafide mistake, or correction of such entry is necessary as a result of succession to, or transfer of, the interest of a raiyat.

(7) A draft scheme for consolidation shall be published under sub-section (1) of section 123 by, placing it for public inspection, free of harge, during a period of not less than one month, at such convenient place in the locality as the Revenue Officer may determine. A proclamation shall previously be published in the village or each of the villages concerned informing all interested persons of the place at which the draft will be open to public inspection, the period during which it will be open to such inspection and the last date on which objections under the said sub-section may be filed. Notwithstanding anything contained in the proclamation, the Revenue Officer may extend the period during which the draft will be open to inspection and during which objections may be filed. Before disposing of such objections the Revenue Officer shall give the parties concerned an opportunity of being heard.

(8) An appeal under sub-section (1) of section 124 shall be preferred within 60 days of the date of the order appealed against and shall lie to the Settlement Officer, Land Consolidation, of the area where an order under clause (iii) of sub-section (1) of section 122 has beeen made in respect of such area, and, to the Deputy Commissioner of the district in any other case. A second appeal under sub-section (2) of

section 124 shall be preferred withing 30 days of the date of the order appealed agains. Every such appeal and second appeal shall state the grounds on which it is based and be accompanied by certified copy of the order appealed against.

(8a) When an encumbrance is transferred from the original holding to a new holding under sub-section (1) of section 129, the Revenue Officer shall note such transfer on the document of encumbrance under his own official seal, when such document is produced before him. The transfer of encumbrance shall also be noted in the khatian to be prepared under sub-section (1) of section 126.

(9) The costs of proceedings of consolidation to be assessed under section 132 shall include the following—

(a) Pay and allowance of the staff, if any, specially entertained by the Revenue Officer for the purpose.

(b) Travelling and daily allowances of the Revenue Officer and other staff for journeys undertaken in connection with the scheme.

(c) Cost of demarcation of boundaries under section 127.

(d) Cost of service of notice and publication of draft scheme and proclamations and other contingent expenditure incurred in connection with the scheme.

(e) Other incidental expenses actually incurred. The total cost shall be apportioned amongst the parties in proportion to the area of land allotted to cach party under the scheme and the Revenue Officer shall serve a formal notice of such apportionment to the parties concerned asking them to pay the cost within one month of the date of the service of the notice. In default, the cost may be recovered under the Bengal Public Demands Recovery Act, 1913.

CHAPTER IV

Payment and realisation of rest

10. Instalments of rent.-The first and second instalments of rent referred to in sub-section (1) of section 135 shall fall due on the last day of the Bengali months of Aswin and Chaitra, respectively.

11. Tender of rent by postal money-order.-When rent is sent by postal money order, the money-order shall be prepared in the form provided for rent money-orders and shall be made payable at the local Tahsil office and addressed to the Tahsilder of that office.

12. Form of real receipts.-The written receipt referred to in section 8 shall be in the Form No. VII appended to these rules. Where the recovery of arrears of rent under certificate is involved the rent receipt shall be in form No. VIIA appended to these Rules.

13. Application of the Bengal Public Demands Recovery Act for realisation of arrear reats.-(1) For the recovery of arrears of rent, the certificate procedure shall be resorted to not as a matter of course but only when attempts at amicable realisation fall while care shall be taken to file certificates in time to save limitation, they shall ordinarily be executed during harvesting seasons when the raiyats are expected to have means to pay.

(2) To avoid hardship to a defaulting raiyat, it shall be competent for a Certificate Officer in executing a certificate for arrears of rent to order the payment of the amount of such certificate by the certificate debtor by instalments within a period not exceeding three years from the date of such order and to stay the execution of the certificate for such period:

Provided that in default of payment of any instalment, the certificate may be executed for the whole of the outstanding balance thereof.

(3) When an order is passed under sub-rule (2) for the payment of any certificate amount by instalments, no interest shall be charged on such amount or any period subsequent to the date of such order.

Provided that in default of payment of any instalment, interest may be charged for the whole of the outstanding balance of the certificate demand from the date of such defalult.

CHAPTER V*

Enhancement and reduction of rent.

14. Powers of Revenue-officers under Chapter XIV of the Act.-(1) When a Revenue-office is appointed for the purpose of determination of rent-rates and for setting fair and equitable rents under chapter XIV, of the Act, within any district, part of a district or local area, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer" Every such office shall have—

(a) The power to cut and thresh the crop of any land included within the area in respect of which an order under section 99 has been made, and to weigh the produce with a view to determine the productive capacity of the soil;

(b) The power to take down evidence in his own hand in English language in proceedings held under the said chapter in accordance with the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits, and

(c) To enter puon any land included within the area, in respect of which an order under section 99 has been made, and to survey, demarcate and prepare a map of the same.

(2) A Revenue-Officer appointed with the additional designation of "Assistant Settlement Officer" shall also have all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875 (Act V of 1875).

(3) A Revenue Officer appointed with the additional designation of "Settlement Officer" shall also have all the powers of Superintendent of Survey under the Bengal Survey Act, 1875 (Act V of 1875).

(4) A Revenue Officer appointed with additional designation of "Settlement Officer" or "Assistant Settlement Officer " shall also have all the powers exercisable by a Civil Court in the trial of suits under the Civil Procedure Code, 1908 (Act V of 1908).

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* [Chapters V-IX were published in the Dacca Gazette, Part I dated the 14th August, 1955.

No. 11016-L. R-8th July 1955- In exercise of the power conferred by section 152 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), read with section 22 of the Bengal General Clauses Act, 1899 (Bengal Act No. I of 1899), the Governor is pleased to make the above rules in Chapters V to XI, in addition to the rules published under notification No. 4205-L.R., dated the 9th March 1955, at page 296-302, Part I, of the Dacca Gazette of the 7th April, 1955.]

(5) A Revenue Officer appointed with the additional designation of "Settlement Officer" may, by general or special order, make over, for disposal, to any Assistant Settlement Officer subordinate to him, proceedings relating to–

(a) Determination of rent-rates.

(b) Preparation of table of rent-rates under sub-section (1) of Section 101.

(c) Settlement of fair and equitable rent.

(d) Preparation of a Settlement rent-roll under sub-section (1) of section 107, and

(e) Objections under sub-section (2) of section 101 and sub-section (1) of section 108.

(6) A Revenue Officer appointed with the additional designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer or Revenue Officer subordinate to him any of the proceedings under Chapter XIV of the Act and may dispose of them himself or transfer them for disposal to any other Assistant Settlement Officer or Revenaue Officer subordinate to him. He is a also declared to be the confirming authority for the purpose of sub-section (1) of section 109.

(7) Where no special Settlement Officer has been appointed for any district, the Deputy Commissioner of that district may discharge all the functions of a Revenue Office under Chapter XIV of the Act and shall have all the powers of a Settlement Officer under sub-rules (1), (3), (4), (5) and (6).

(8) In respect of all Operations under Chapter XIV of the Act which have been placed under the administrative control of the Director of Land Records and Surveys. East Pakistan,

the said Director may perform all the functions of a Revenue Officer under the said chapter and shall have all the powers of Settlement Officer under sub-rules (1), (3), (4), (5) and (6). In respect of such operations, he shall be the Superior Revenue Authority under sub-section (3) of sectin 101 and sub-section (1) of section 110.

Comment

1. **Revenue Officer.**-His function is not judicial function—but he is concerned with mutation of names-On report from the Tahsilder, Revenue Officer incorporates necessary changes in record-of-right. If necessary he can make enquiry into correctness of what is reported to him. If necessary he may take evidence, but thereby he does not become a Court.

15. Determination or rent-rates under Chapter XIV of the Act.-(1) The Revenue Officer shall determine the rent rate of each class of land, separately.

(2) The Revenue-Officer shall verify the classifications of land by local enquiry and make additions and alterations, where necessary, in the existing classification on record, with the approval of the Revenue-Officer immediately superior to him.

(3) For each unit of area, the Revenue-Officer shall determine by local enquiry the normal yield per acre of different crops for different classes of land. He may also make crop cutting experiments for determining the normal yield of any crop, per acre, for any class of land in the unit.

(4) When the Revenue-officer has determined the normal yield under sub-rule (3), he shall cause the figures relating thereto to be published at some convenient plce or places in the unit with a general notice informing the tenants concerned that they may file objections to such figures within thirty days from the date of such publication. The fact of such publication and the last date on which objections may be filed shall also be proclaimed in the unit by beat of drum on the date of such publication.

(5) The Revenue-officer may, after considering the objections, if any, filed under sub-rule (4), revise the figure of the normal yield for any class of land.

(6) Omitted.

16. Preparation of the table or rent-rates and publication of the table.-(1) The table of rent-rates referred to on clause (a) of sub-section (1) of section 99 of the Act, shall be prepared in Form No. VIII apended to these rules and shall contain the particulas specified therein.

(2) The draft table of rent-rates shall be published under sub-section (1) of section 101 of the Act by placing it for public inspection free of charge, during a period of not less than thirty days at such convenient place or places in the unit as the Revenue-Officer may determine. A proclamation shall previously be published in the unit informing the tenants concerned of the place or places at which the draft table will be open to public.inspection, the period during which it will be open to such inspection and the last date on which objections under sub-section (2) of section 101 may be filed.

(3) Blank forms of objection shall be supplied freee of charge, and objections shall, as far as practicable, be made in such forms. The Revenue-officer shall issue notices informing the objector of the date and place fixed or the hearing of the objection . An objection shall not be disposed of in the absence of the object or, unless the Revenue-Officer is satisfied, for reasons to be recorded in writing, that the notice was duly served on the objector.

17. Settlement of fair and equitable rents and preparation of Settlement Rent-roll under Chapter XIV of the Act.-(1) When the Revenue-officer proceeds to settle fair and equitable rents under Chapter XIV of the Act, he shall prepare a Settlement Rent roll for each village.

(2) The Settlement Rent-roll shall be prepared in Form No. IX appended to these rules and shall contain the particulars specified therein.

(3) Before preparing the Settlement Rent-roll, the Revenue-officer shall issue a proclamation informing all persons in whose names Khatians have been opened, of the time and

place at which the preparation of the Settlement Rent-roll will begin. If any person be absent, the Revenue-officer shall make no entry in the Settlement Rent-roll which would have the effect of altering the rent or fixing a new rent of that person until a special notice has been duly served on that person.

(4) When determining the final entries to be made in the Settlement Rent-roll, the Revenue-officer shall read out or cause to be read out in his presence the principal entries relating to the Khatian of each person whose rent is to be settled and shall enter in the Settlement Rent-roll with his own hand the fair and equitable rent settled for each such Khatian.

(5) Omited.

18. Draft publication of Settlement Rent-roll and disposal of objections under sub-section (1) of section 108 of the Act.-(1) A draft Settlement Rent-roll shall ;be published under sub-section (1) of section 108 of the Act by placing it for public inspection, free of charge, during a period of not less than one month, at such convenient place as the Revenue-officer may determine. A proclamation shall previously be published in the village, informing all tenants of the place at which the draft Settlement Rent-roll will be open to public inspection, the period during which it will be open to such inspection and the last date on which objections under the said sub-section may be filed. Notwithstanding anything contained in the proclamation, the Revenue-officer may extend the period during which the draft Settlement Rent-roll will be open to inspection and during which objections may be filed

(2) Blank forms of objections shall be supplied free of charge, and objections shall, as far as practicable, be made in such forms. Along with the original objection, the objector shall file a copy or copies of the same for service on all other persons who, in the opinion of the Revenue-officer, are materially interested in the case. The Revenue-officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection, and with each notice to a person, other than the

objector, he shall forward a copy of the objection. Objections shall not be disposed of in the absence of any of the parties materially interested or their representatives, unless the Revenue-officer is satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

18A. Confirmation of the Settlement Rent-roll under section 109.-When all objections under sub-section (1) of section 108 have been disposed of and after necessary corrections of the Settlement Rent-roll on the basis of decision on such objections and after incorporation of corresponding corrections, if any, in the said rent-roll on basis of decisions on objections and appeals, if any, relating to record of rights under chapter XVII of the Act, when revision of record-of-rights is undertaken simultaneously with an operation under chapter XIV of the Act, the Revenue-officer shall submit the Settlement Rent-roll to the prescribed confirming authority, as required under sub-section (1) of section 109. While making any correction in the draft Settlement Rent-roll on the basis of orders on objections or appeals referred to above, the Revenue-officer shall keep a suitable reference to that effect under his signature in the remarks column of the Settlement Rent-roll.

19. Final publication of Settlement Rent-roll under sub-section (3) of section 109 of the Act.-A settlement Rent-roll shall be finally published under sub-section (3) of section 109 of the Act by placing it for public inspection, free of charge, during a period of not less than one month, at such convenient place as the Revenue-officer may determine. A proclamation shall previously be published in the village informing the tenants of the place at which the final Settlement Rent-roll will be open to public inspection and the period during which it wil be open to such inspection. A certificate of final publication shall be signed by the Revenue-officer on the roll.

20. Manner of presenting an appeal under sub-section (1) of section III of the Act.-An appeal under sub-section (1) of section III of the Act shall be in writing, shall state the grounds on which the appeal is based and shall be accompanied by a certified copy of the order appealed against.

21. Incorporation in the Khatian of changes in the Settlement Rent-roll.-If an order under section 110 or section III of the Act purports to amend or alter any entry in the Settlement Rent-roll, the change shall be incorporated in the Khatian concerned by the Revenue-officer and certified by him with a suitable reference in the remarks column to that effect.

CHAPTER VI

Maintenance of record-of-rights under section 143 of the Act.

22. Duties of Tahsildars.-(1) The Tahsildar or Partwari shall be primarily responsible for reporting promptly to the Revenue-officer immediately superior to him [apparent clerical mistakes in the record-of-rights,] all changes in the ownership of land, all cases of alluvion, diluvion and reformation of land and the particulars of unsettled lands, in his area. He shall also promptly bring to the notice of the Revenue-officer all cases of contravention of the provisions of sections 90 and 93 and cases of extinguishment of the interest of tenants under clauses (a), (c) and (d) of sub-section (1) of section 92 or under the second proviso to sub-section (4) of section 90 of the Act.

(2) In the case of succession, intestate or testamentary, the report shall contain the names and addresses of all heirs and their respective shares and nature of interests according to the law of inheritance applicable to the deceased or according to the terms of the testament, as the case may be, and also the description of the holding or holdings they have inherited. The report shall also state if any area of land inherited by any heir is acquirable under section 91 of the Act.

(3) In the case of alluvion, diluvion and reformation of land, the report shall state its nature, area and location and it the case of reformation or accretion, also the Khatian number of the holding to which it relates and the area which the

raiyat concerned is entitled to possess under the provisions of section 86 or section 87 of the Act, as the case may be.

(4) In the case of apparent clerical mistakes in the record-of-rights, the report shall state the mouza and Khatian number of the holding to which such mistakes relate.

23. Duties of Revenue Officers.-(1) The Revenue-officer shall, if he is vested with necessary powers in this behalf under the Act, incorporate, and if he is not vested with such powers, send up proposals to the officer vested with such powers for incorporating necessary changes in the record-or-rights—

(a) When mutations of names is allowed as a result of inheritance either on the report of the Tahsilder under rule 22 or on the application of the heirs or otherwise;

(b) When mutation of names is made as result of transfer on receipt of the notice of transfer under section 89 of the Act ;

(c) When the rent of a holding is abated under sub-section (1) of section 86 of the Act, or on account of abandonment or acquisition of land;

(d) When any land vests in or is at the disposal of, the Provincial Government under the first proviso to sub-section (2) of section 86, sub-section (2) of section 87, the second proviso to sub-section (4) or sub-section (5) of section 90, sub-section (2) of section 92, sub-section (2) of section 93 or clause (b) of sub-section (8) of section 97 of the Act;

(e) When new settlements of lands are made;

(f) When any raiyat is entitled to repossess or hold any land under sub-section (2) of section 86 or sub-section (1) of section 87 of the Act;

(g) When orders are passed by the Court under sub-section (7) of section 96 of the Act on applications for pre-emption;

(h) When parcels of land are amalgamated under section 116 or a holding is subdivided under section 117 or the interest of a co-sharer tenant in a holding is transferred under section 118 of the Act;

(i) When a scheme for consolidation of holdings is finally confirmed under section 125 of the Act; or

(j) When for any other reason, correction of the record-or-rights become necessary.

(2) Before sending any report under this rule, the Revenue-officer shall satisfy himself about its correctness and for this purpose he may make such enquiry and take such evidence as he thinks fit.

(3) The Revenue-officer shall, either on application or on receipt of a report under sub-rule (1) of rule 22, for the correction of apparent clerical mistakes in the record-of-rights, after consulting the previous settlement records, preliminary rent-rolls, Collector's copy of record-of-rights and Register II, and making such other enquiries ashe considers necessary, direct correction of such clerical mistakes, and the record-of-rights maintained by the Collector or the Subdivisional Officer or in the Tahsil Office and Register II shall accordingly be corrected and the corrected copies of the record-of-rights shall be given to the parties concerned.

(4) The Revenue-officer shall, either on application or on receipt of a report under clause (j) of sub-rule (1), for the correction of an entry, that has been procured by fraud in the record -of-rights after final publication thereof, after consulting the previous settlement record, preliminary rent -rolls draft record-of-right, subdivisional and tahsil copies of records modified under section 46 of the Act, holdingwari rent-rolls and Register II, and making such other enquiries as he considers necessary, direct excision of the fraudulent entry, and his act in according so being a ministerial act, shall not be open to appeal. At the same time the Revenue officer shall make the correct entry, leaving a note against the excised entry that is fraudulent, and make in the record a reference to a proceeding in which the reasons for excision have been stated. He shall also direct similar correction in the record-of-rights maintained in the subdivisional record room and the tahsil officer and shall supply corrected copies of the record-of-rights to the parties concerned.

Chapter VI of the Tenancy Rules, 1954 consists of rules 22-25 of the rules 22-24 relate to mutation proceeding.

Duties of Revenue Officers, enumerated.

Comment

Rule 23(4)—Taking into consideration the oral evidence, the Exhibit 2 and the Exhibit Kha, the conclusion would follow that Exhibit Kha strikes the very basis and foundation of the claim of the plaintiff and it can undoubtedly be said that the plaintiff had acquired no valid title in the suit land and plaintiff has miserable failed to prove the alleged pattan on the basis of which SA khatian was prepared in the name of Hasanullah and hence the trial Court has rightly dismissed the suit.[1]

24. Duties of officers entrusted with the work of maintaining the record-of-rights.-(1) Subject to the provisions of sub-rule (2), the officer entrusted with the work of maintaining the record-of-rights shall promptly incorporate therein all changes reported to him under rule 23.

(2) Before incorporating any change in the record-of-rights, the officer shall carefully examine the report on the basis of which the change is to be made and shall satisfy himself about its correctness and for that purpose, he shall follow such procedure and take such action as may be directed by the Board of Revenue.

(3) Every change made by the officer in the record-of-rights shall be signed by him and dated and reference of the document of the basis of which the change is made shall be given against it.

(4) When any land vests in or comés to the possession of the Government it shall be recorded in the Khas Khatian and if such land formed the whole or a part of an existing holding, the Khatian of that holding shall be cancelled or modified, as the case may be.

(5) When any Settlement of land is made, a new khatian shall be opened, in the name of the new tenant or if he has a khatian covering the same ownership already, necessary addition or alteration shall be made in such khatian and he shall be furnished with a certificate copy of the new khatian or of the khatian so changed, as the case may be, free of cost.

25. Abatement of rent.-When any abatement of rent of any holding is necessary on account of abandonment, eschest or any other cause, the authority competent to grant such abatement shall, where no other provision of law or rule applies, be guided by the principles laid down in the rule made under sub-section (1) of section 86 of the Act in the matter of determining the amont by which the rent shall be abated.

Comments

Revenue officers—His function is not judicial function—but he is concerned with mutation of names—On report from the Tahilder, Revenue Officer incorporates necessary changes in record-of-right. If necessary he can make enquiry into correctness of what is reported to him, but thereby he does not become a Court.

CHAPTER VII

Revision of record-of-rights under section 144 of the Act.

26. Particulars to be recorded.-When an order is made under sub-section (1) of section 144 of the Act, for the revision of record-of-rights in respect of a district, part of district or local rea, the particulars to be recorded shall include, either without or in addition to other particulars, some or all of the following, namely:

(a) the name, father's name and address of each tenant or occupant;

(b) the class to which each such tenant or occupant belong;

(c) the situation, class, quantity and one or more of the boundaries of the land held by each tenant or occupant;

(d) the rent payable at the time the record-of-rights is revised;

(e) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being revised, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing one, the time at which and the amount by which, it increases;

(f) the mode in which the rent has been fixed whether by contract, by order of a Court, or otherwise;

(g) if the rent is a gradually increasing one, the time at which and the steps by which it increases;

(h) the rights and obligations of each tenant in respect of—

(i) the use by tenants, of water for agricultural purposes, whether obtained from a river, jhil, tank or well, or any other source of supply, and

(ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant or for prevention of the onrush of flood-water, whether or not such appliances be situated within the boundaries of such land;

(i) the special conditions and incidents, if any, of the tenancy;

(j) any right or way or other easement attaching to the land for which a record-of-rights it being revised.

27. Stages of the work.—The work shall ordinarily consists of the following stages, namely :

(i) traverse survey;
(ii) cadastral survey;
(iii) erection of boundary marks;
(iv) preliminary record-writing (Khanapuri);
(v) local explanation (Bujharat);
(vi) attestation;
(vii) publication of draft record;
(viii) disposal of objections;

(ix) filing of appeals and disposal thereof;
(x) preparation and publication of final record.

Provided that all or any of the first six stages may be omited, or a new stage added, according to the circumstances of the case, with the approval of the Director of Land Records and Surveys.

27A. Cadastral Survey.-(1) In the course of proceedings under section 144, a large scale map showing therein roads, rivers, railways, homestead, fields and other physical features of the country shall be prepared for each village, as a unit of survey and record.

(2) When the area contained within the boundaries of a village map of any previous survey is unsuitable as a unit of survey and record, the Revenue Officer having the additional designation of Settlement Officer, shall, after ascertaining, as far as possible, the opinions of the local people submit his proposal for the determination of the area to be adopted as a unit of survey and record to the Board of Revenue, through the Officer to whom he is subordinate. The unit shall, if sanctioned by the Board of Revenue, be declared and adopted as a village for the purpose of preparation and revision of record-of-rights.

28. Procedure of work up to Attestation.-The work of the stages up to attestation as mentioned in rule 27, shall be completed in accordance with the Technical Rules and Instructions of the Settlement Department, as modified, from time to time, by the Director of Land Records and Surveys and under such other instructions as may be issued in this behalf by the Director of Land Records and Surveys or by the Revenue-officer appointed with the additional designation of Settlement Officer in any district or part of a district or local area.

29. Publication of draft record-of-rights.-After completion of attestation the Revenue-officer shall publish the draft record-of-rights by placing it, for public inspection free-of-charge during a period of not less than one month, at such convenient place as he may determine.

A proclamation shall previously be published in each village informing the maliks, tenants and local representative of the Deputy Commissioner of the place at which the draft record-of-rights of that village will be open to such inspection and the last date of filing objections. Notwithstanding anything contained in the proclamation, the Revenue-Office may extend the period during which the draft record-of-rights will be open to inspection and during which objection under rule 30 may be filed.

30. Objection.–Blank forms of objection shall be supplied free-of-charge, and all objections shall, as far as practicable, be made in such forms, along with the original objection, the objector shall file a copy or copies of the same for service on all other persons who, in the opinion of the Revenue-officer are materially interested in the case. The Revenue-officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection, and, with each notice to a person, other than the objector, he shall forward a copy of the objection. Objection regarding the ownership or possession of land or of any interest in land shall be decided summarily by the Revenue-officer. The record shall contain a brief summary of the evidence taken and an abstract of the reasons for the decision. Objections shall not be disposed of in the absence of any of the parties materially interested or their representatives, unless the Revenue-officer be satisfied, for reasons to be recorded, in writing, that the notice was duly served on the person concerned.

31. Appeal.–(1) Any person aggrieved by an order passed by the Revenue-officer on any objection made under rule 30 may appeal to the Revenue-officer appointed with the additional designation of Settlement Officer or to such Revenue-officer appointed with the additional designation of Assistant Settlement Officer as may be empowered by him in this behalf, within 30 days from the date of the order appealed against. Every such appeal shall be in writing and shall state the grounds on which the appeal is based and shall be

accompanied by a certified copy of the order appealed against and a process fee in court fee stamps as specified below.

(a) For each notice whether directed to one or more persons where such persons reside in the same village—Rupee one and twenty-five paisa; and

(b) Where the notice is to be served in different villages, a separate fee shall be charged for service in each village at rates as in clause (a) above.

(2) Before passing the final order on any such appeal, the Appellate Officer shall give the parties and opportunity of being heard and shall record in the proceedings an abstract of the reasons for his decision.

32. Preparation of Final Records.–When all objections under rule 30 and all appeals under rule 31 have been disposed of and when the draft record of rights has been corrected in accordance with the original and appellate orders on all objections, the Revenue-officer shall proceed to frame the final record-of-rights.

In cases, however, where operations under Chapter XIV of the Act have been undertaken and fair and equitable rents have been settled and the settlement rent-roll has been finally framed under sub-section (3) of section 109, the Revenue-officer shall, after the draft record-of-rights has been corrected in accordance with the original and appellate orders on all objections, incorporate in the draft record-of-rights the rent determined in respect of each holding or tenancy on the basis of such finally framed settlement rent-roll and then proceed to frame the final record-of-rights.

Provided that in a case where the fair and equitable rent have not been so settled and the settlement rent-roll has been finally framed by the tme the record-of-rights is ready for final publication, the Revenue-officer instead of withholding final publication of the record-of-rights, may finally frame and finally publish the same noting the existing rents therein without incorporating the fair and equitable rent settled under Chapter XIV of the Act.

The final records shall be prepared in conformity with the daft records corrected as above and shall consist of a series of

khatians prepared in forms which are generally similar to the forms used for the khatians of the draft record-of-rights. The Khasra shall not form part of the final record-of-right. The final record shall be printed or prepared in manuscript according to the direction as may be given by the Provincial Government, by general or special order.

33. Publication of Final Records.-The Revenue-officer shall publish the final record-of-rights by placing it, for public inspection, free of charge, during a period of not less than 30 days, at such convenient place as he may determine. A proclamation shall previously be published in each village informine the Maliks and tenants and the Deputy Commissioner of the place at which the final record-of-rights of that village will be open to public inspection and the period during which it will be open to such inspection.

34. Certificate of final publication.-(1) When a record-of-rights has been finally published under rule 33, the Revenue-officer shall, within sixty days from the date of final publication, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.

(2) The Provincial Government may, by notification, in the official Gazette, declare, with regard to any specified area, that record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

35. Presumption as to the correctness of record-of-rights.-(1) When a record-of-rights is finally published under rule 33, the publication shall be conclusive evidence that the record has been duly revised under section 144 of the Act.

(2) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

CHAPTER VIII

Powers of Revenue Officers in Revising Record-of-Rights under section 144.

36. Power vested in Revenue Officers.-When a Revenue-officer is appointed for the purpose of revision of a record-of-rights under Chapter XVII of the Act within any district, part of a district or local area, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer". Every such Officer shall have,—

(a) the power to take down evidence in his own hand in English language in proceedings held under the said Chapter, in which an appeal is allowed , in accordance with the procedure laid down in the Code of Civil Procedure 1908, for the trial of suits; and

(b) to enter upon any land included within the area in respect of which an order under section 144 has been made to survey and demarcate and prepare a map of the same.

37. Further Powers vested in Assistant Settlement Officer under Bengal Act V of 1875.-A Revenue-officer appointed with additional designation of "Assistant Settlement Officer" shall have all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875.

38. Further Powers vested in Settlement Officer under Bengal Act V of 1875.-A Revenue-officer appointed with the additional designation of "Settlement Officer" shall have all the powers of Superintendent of Survey under the Bengal Survey Act, 1875.

39. Further powers vested in Settlement and Assistant Settlement Officers.-A Revenue-officer appointed with the additional designation "Settlement Officer " or "Assistant Settlement Officer" shall have all powers exercisable

by a Civil Court in the trial of suits under the Civil Procedure Code, 1908 (Act V of (1908).

40. Power of Settlement Officers to make over certain matters to Assistant Settlement Officers.–A Revenue-officer appointed with the additional designation of "Settlement Officer" may by general or special order, make over, for disposal to any Assistant Settlement Officer subordinate to him, proceeding relating to–

(a) Objections under rule 30, and

(b) Appeals under rule 31.

41. Power of Settlement Officer to withdraw and transfer cases.–A Revenue-officer appointed with the additional designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer or Revenue-officer subordinate to him any of the proceedings under Chapter XVII and may dispose of them himself or transfer them of disposal to any other Assistant Settlement Officer or Revenue Officer subordinate to him.

42. Special Power of Revenue-officer appointed with the additional designation of Settlement officer.–A Revenue-officer appointed with the additional designation of "Settlement Officer' may, at any time before the publication of final record-of-rights, direct that any portion of the proceedings referred to in rules 28 to 32 in respect of any district, part of a district, or local area shall be cancelled and that the proceedings shall be taken up fresh from such stage as he may direct.

42A. Correction of fraudulent entry before final publication of record-of-rights.–The Revenue-officer, with the additional designation of 'Settlement Officer' shall, on receipt of an application or on receipt of an official report for the correction of an entry that has been procured by fraud in record of rights before final publication thereof, after consulting relevant records and making such other enquiries as he deems necessary, direct excision of the fraudulent entry

and his act in doing so shall not be open to appeal. At the same time, the Revenue-officer shall make the correct entry after giving the parties concerned a hearing and recording his finding in a formal proceeding for the purpose of future reference.

42B. Correction of obvious clerical errors before final publication of record-of-rights.–The Revenue-officer, with the additional designation of Setlement Officer shall have inherent jurisdiction to correct obvious errors, e.g. arithmetical or clerical errors, before final publication of the record-of-rights. The Setlement Oficer may delegate the said power to some other Revenue-officer, with the additional designation of Assistant Settlement Officer, subordinate to him.

43. Power of Deputy Commissioner where no Special Settlement Officer is appointed.–Where a Special Settlement Officer has been appointed for any district, the Deputy Commissioner of that district may discharge all the functions of Revenue-officer under Chapter XVII of the Act and shall have all the powers of a Settlement Officer under rules 36, 38, 39, 40, 41, 42, 42A and 42B.

44. Powers vested in Director of Land Records and Survey.–In respect of all operations under Chapter XVII of the Act which have been placed under the administrative control of the Director of Land Records and Surveys, East Pakistan, he may discharge all the functions of a Revenue-officer under the said Chapter and shall have all the powers of a Settlement Officer under rules 36, 38, 39, 40, 41, 42, 42A and 42B.

CHAPTER IX

Exemption of rent.

45. Exemption of land from payment of rent under section 151A of the Act.-(1) An application under sub-section (1) of section 151A shall be made in Form No. X appended to these rules.

(2) If the Deputy Commissioner, after such enquiry as he deems fit, is satisfied that the land specified in the application or any portion thereof is actually used for any of the purposes mentioned in sub-section (1) of section 151A as stated in the application he shall proceed to determine the area of such land in the manner prescribed below :

(a) He shall cause an enquiry and survey of the land specified in the application by a Kanungo or Surveyor under the supervision of a responsible officer.

(b) The Kanungo or the Surveyor, after due enquiry, shall demarcate the area of the land actually in use as a place of public prayer/religious worship/public graveyard/public cremation ground on the field on the lines of the explanation given at the end of section 151A, calculate the area thereof and submit a report to the Deputy Commissioner. He shall also carve out new plots, where necessary in the mouza map when parts of plot or plots are found to be so used with corollary corrections in the plot index.

Form No. I

[Rule 3 (1)]

Application

To

The Revenue Officer,

.... (Address)

Sir,

The entire/A portion of the land of my holding specified below having been lost by diluvion during the ..... (Period) .... I hereby apply for abatement of rent in respect thereof under section 86(1) of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951) :

Specification of the land.

(i) District ....

(ii) Thana ....

(iii) Mauza with J.L. or RS No.............

(iv) Khatian No. of the holding..............

(v) Total area of the holding ....

(vi) Annual rent and cesses payable for the holding—

(a) Rent ....

(b) Road and PW Cess.............

(c) Education Cess ....

(d) Local Rate ....

(vii) Approximate area of the land diluviated with plot Nos ....

....

Signature of the Tenant

Date ....

....

(Full Address)

NB-The alternatives not applicable should be struck off.

Form No. II

[Rule 4(1)]

Certificate

This is to certify that .... (name of the person), son of .... of.......... (full address) has undertaken large scale farming by the use of power-driven mechanical appliances and that he may be allowed to possess up to .... acres of land for the purpose under the provision of the proviso to sub-section (2) of section 87/90 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951).

....

Signature

Date....................

Collector/Additional Collector of

....

NB-The alternatives not applicable should be struck off.

Form No. III

[Rule 4(2)]

Notice

....

(Name of the raiyat)

....

(Address)

Please take notice that under the provison of sub-section (3) of section 87 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), it has been decided that the land measuring, more or less............. acres and situated within the boundaries stated below, which accreted to the holding bearing khatian No............ of mauza...............thana ...., District........ is at the disposal of the Provincial Government, being in excess of the limit laid down in section 90 of the said Act—

Boundaries of the land.

....

Signature

Revenue Officer of

Date..........

....

(Place)

Form No. IV

[Rule 5(1)]

Registered Transfer notice/Mutation Case No.......... Mouza.......... Thana.............. District..............

To

The Revenue Officer/Co-sharer tenant.....

Vill....................

P.O................

Dist...........

Please take notice of the transfer of/the portion or share of/the bolding specified in the schedule on the reverse.

The transfer for Rs............ has.................been registered at the ....Sub-Registry Office on .... , 19...........

The sale of/The decree or order absolute for the foreclosure of mortgage on/the portion or share of/the holding for Rs...... has been confirmed in the Court of .... at.......... on .... 19........ in Execution/Certificate Case No.......... of 19...............

....

Signature

Sub-Registrar/Revenue Authority/Judge

NB-The alternatives not aplicable should be struck off.

(Reverse)

Particulars

1. Name, father's/husband's name and address of transferor/judgment debtor/certificate debtor
2. Name, father's/husband's name and address of transferee/decree holder/auction purchaser
3. Nature of transfer
4. Registered deed No./Execution Case No./Certificate Case No.
5. Date of transfer/decree sale
6. Consideration money/value/sale price

Schedule of Land

Serial No.	Name of thana	Name of Mouza with JL No.	CS/SA Khatian number	Total rent of the Khatian	CS plot number	Total area of the plot	Share and area of the plot in the Khatian	Share and area of the plot transferred/decreed/auction sold	Remarks
1	2	3	4	5	6	7	8	9	10

Tashilder's report :

Revenue Officer's order :

Form No. V

[Rule 6(1)]

Notice

To
The Revenue Officer
.... (Address).

Please take notice that I, ... (name) of ....(full postal address) hereby surrender the holding bearing khatian No......... of mouza, ... police station .... district, ... at the end of the agricultural year .... under the provision of clause (b) of sub-section (1) of section 92 of the East Bengal State Acquisition and Tenency Act, 1950 (East Bengal Act No. XXVIII of 1951).

Date ....

....
Signature of the raiyat.

Form No. VI

[Rule 9(1)]

Application

To
The Revenue Officer
....
(Address)

Sir

We, the undersigned raiyats, hereby apply under sub-section (1) of section 119 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), for the consolidation of our holdings specified in the attached schedule.

A scheme for such consolidation is/is not submitted herewith.

Date ....

....
Serial No. Signature of the applicants.

The Schedule

Serial No.	Name of the application	Full postal address	Description of holdings.					
			Khatian No. [i]	Plot No. [ii]	Area with share [iii]	Mauza [iv]	Thana [v]	District [vi]
1	2	3	4					

Form No. VII

(Rule 12)

Rent-receipt

Tenant's portion

Name of the District.	Name and tauzi number of the estate.	Name of Tahsil	Tahsilder number of receipt.
1	2	3	4

Name and number of village.	Name of Thana and pargana.	Jamabandi number	Holding number as per Register]	Area.
5	6	7	8	9

Name and father's name and residence of the tenant.	By whom paid.
10	11

Annual demand of the Tenancy

Cash-rent	Road & Public Works and Education Cesses. 13		Miscellaneous.	Total
	Road and Public Works Cesses.	Education Cess.		
12	[i]	[ii]	14	15

Payment

	Arrear 16	Interest 17	Current 18	Advance 19	Total 20
Rent.....					
Road and PW...					
Cesses					
Education.....					
Miscellaneous.....					
Total....					

Grand Total [in word]

*State year in respect of which payment is made.

Note-When payment is made by cheque its particulars should be entered here.

Signature..........................

Designation.......................

Year and date [English]......

Year and date [Bengali]......

Signature After Form No. VII appended to the said Rules, the following new Form, namely "Form No. VIIA (Rule 12)

সার্টিফিকেটভুক্ত খাজনা ও অন্যান্য তলবানার দাখিলা।

সন...... ক্রমিক নং ....

সার্টিফিকেট মোকদ্দমা নং ..... থানা........ ইউনিয়ন/তৌজি নং.. মৌজা.....

জিলা ...... খতিয়ান নং..... জমির পরিমাণ.... দাগ নং

জমাবন্দি নং

মালিক বা প্রজা ও	তাহার পিতার/স্বামীর নাম	সাকিন	কাহার দ্বারা দাখিল হইল।

মালিক বা প্রজার উপর সার্টিফিকেটের দাবীর বিবরণ।

খাজনা	শিক্ষ কর	উন্নয়ন ও সাহায্য কর	অতিরিক্ত উন্নয়ন ও সাহায্য কর।	স্থানীয় কর।	সার্টিফিকেট দায়েরের তারিখ পর্যন্ত	সার্টিফিকেট দায়েরের পরবর্তী আদায়ের তারিখ পর্যন্ত সুদ।	সার্টিফিকেট মোকদ্দমার খরচ।	মোট

ওয়াশীল

	বকেয়া					সার্টিফিকেট দায়েরের তারিখ পর্যন্ত সুদ	সার্টিফিকেট দায়েরের পরবর্তী আদায়ের তারিখ পর্যন্ত সুদ	সার্টিফিকেট মোকদ্দমার খরচ।	মোট
	সন ১৩.....	সন ১৩.....	সন ১৩.....	সন ১৩.....	মোট				
খাজনা									
শিক্ষা কর									
উন্নয়ন ও সাহায্য কর									
অতিরিক্ত উন্নয়ন ও সাহায্য কর									
স্থানীয় কর									

সর্বমোট ....

দ্রষ্টব্য- চেকের দ্বারা খাজনা দেওয়া হইল তাহার বিবরণ।

আদায়কারী কর্মচারীর সহি ও তারিখ

.... তহশীল অফিস

Form No. VIII

[Rule 16(1)]

Table of Rent-rates

District........................ Thana(s)................. Unit..............

Serial No. 1	Class of land. 2	Normal yield per acre. 3	Average price. 4	Total value of produce per acre. 5	One-tenth of total value in Col. 6

Rate of rent determined per-acre. 7	Initial of Revenue Officer. 8	Remarks 9

Signature
Revenue-Officer.
Date..............

Form No. IX

Settlement Rent-Roll

সেটেলমেন্টের জমাবন্দী

[Rule 17(2) EBT Rules]

জিলা............ থানা..............

Zilla......... PS..................

1 ক্রমিক নম্বর SL. No.	2 খতিয়ান নম্বর Khatian No.	3 মালিক/অকৃষি প্রজা/দখল-কারের নাম Malik/Non-Agricultural tenant/lessee	4 যে পরিমাণ জমির জন্য বর্তমান রাজস্ব দেওয়া হইতেছে একর শতাংশ Existing area of the holding in Acre Acre Dec.	5 বর্তমান রাজস্ব টাকা পয়সা Existing Revenue/tenant. Rs. Paisa.

মৌজা............... জে. এল. নং............

Mauza............. J.L. No...........

6 বর্তমান জরিপ অনুসারে জমির পরিমাণ জমাবন্দীর শ্রেণী কর শতাংশ	7 রাজস্ব নিরিখের তালিকা অনুযায়ী একর প্রতি নিরিখ টাকা পয়সা	8 ৯৯(১) (খ) ধারার নির্দেশ অনুযায়ী ১০৭ ধারামতে ধার্য্য রাজস্ব টাকা পয়সা	9 রাজস্ব কর্মচারীর দস্তখত	10 মন্তব্য
Area according to present Survey.	Rate as per Table of rent-rates.	Rent of the holding u/s 99(1)(b) read with sec. 107	Initial of the Revenue Officer	Remarks
Assessment Acre Dec Class	Rs. Paisa.	Rs. Paisa.		

রাজস্ব কর্মচারীর দস্তখত
তারিখ...............

Signature of the Revenue Officer.
Date.........................

Form No. X

(Rule 45)

Application

To
The Deputy Commissioner ....
Sir,

Whereas the land of my holding specified in the schedule below is used primarily as a place of public prayer /religious worship/a public graveyard/a public cremation ground;

It is requested under sub-section (1) of section 151A of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), as amended by the East Pakistan Ordinance No. XXI of 1969, that an order may be passed under sub-section (3) of the said section exempting the land from payment of rent.

Schedule

District.................. Thana......................

SL No. 1	Name of Mouza with JL No. 2	Khatian number 3	Plot No. with other description. 4	Total area of the Plot 5	Area out of the total for which exemption from rent is prayed forr. 6	Nature of use of the land in Col. 6 7	Remarks. 8

(Signature of the applicant)

Dated the ....

APPENDIX -III

THE STATE ACQUISITION (BONDS) RULES, 1957.

Notification No. 727 L.R.—16th January 1958.—In exercise of the power conferred by section 18 of the East Pakistan State Acquisiton (Bonds) Act, 1957 (East Pakistan Act No.XXXVIII of 1957), the Governor is pleased to make the following rules, namely :—

1. Short title : These rules may be called the East Pakistan State Acquisition (Bonds) Rules, 1957.

2. Definitions : In these rules, unless there in anything repugnant in the subject or context,—

(a) "the Act" means the East Pakistan State Acquisition (Bonds) Act, 1957 (East Pakistan Act No. XXXVIII of 1957);

(b) "Form" means a Form appended to these rules;

(c) "Treasury" means any treasury located in the Province of East Pakistan and includes a Sub-Treasury;

(d) "District Magistrate" means every person exercising all or any of the powers of a District Magistrate as defined in the Code of Criminal Procedure for the time being in force;

(e) "Mutilated Bond" means a Bond which has been destroyed, torn, or damaged in material parts thereof and the material parts of a bond are those where the number and the face value of the bond or payments of instalments or the signature of the issuing authority are recorded;

(f) "Lost Bond" means a Bond which has actually been lost and shall not mean a Bond which is in the possession of some person adversely to the claimant;

(g) "Defaced Bond" means a Bond which has been made illegible or rendered undecipherable in any of its material parts;

(h) all other words and expressions have the same meanings as assigned to them under the Act.

3. Requisition for issue of Bonds : (1) As soon as possible after the payment of any amount on account of compensation under a Compensation Assessment-roll has become due under the provisions of sub-section *(1)* of section 58 of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951), the Collector or the Deputy Commissioner or the Additional Collector of Revenue or the Joint Collector of Revenue of the district concerned (hereinafter referred to as the "Requiring Officer") shall send a requisition in Form No. 1 to the Bank for issuing a Bond or Bonds for such amount to the person or persons entitled to receive the same.

(2) Before sending the requisition under sub-rule *(1)*, the Requring Officer shall serve on the person entitled to receive the compensation (hereinafter referred to as the "obligee" which form includes his successors-in-interests,) a notice stating the amount of compensation for which the Bond is proposed to be issued in his name and asking him to inform the Requiring Officer in writing by a fixed date the denomination or denominations of the Bond or Bonds he wishes to have and the name of the Public Debt Office, Treasury or Sub-Treasury in East Pakistan at which he wishes to receive payments.

(3) If the information asked for under sub-rule (2) is received by the fixed date, the Requiring Officer shall fill the Requisition Form according to such information and if no such information is received by the fixed date, a Bond or Bonds of the highest possible denomination or denominations shall be requisitioned and the same shall be made payable at the first instance at the State Bank of Pakistan, Dacca, or the Treasury situated at the headquarters of the district of the Requiring Officer.

(4) Specimen signatures of all the Requiring Officers who are authorised by these rules to sign the requisition forms will be supplied to the Public Debt Office, Dacca for record. Any change in the incumbents of these offices shall

immediately be notified to the Bank and the specimen signatures of the incoming officer supplied to the Bank under authentication of the outgoing officer or a Magistrate of the First Class.

4. Form and denomination of and instalments under Bonds : (1) The Bonds shall be issued in the form of Promissory Notes as in Form No.II.

(2) They shall be issued in denominations of Rs.100, Rs. 500, Rs.1,000, Rs. 5,000, Rs. 10,000, Rs. 20,000, Rs. 50,000 and Rs.1,00,000 only.

(3) All fractions of Rs.100 shall be paid in cash.

(4) The aggregate amount of principal and interest due on a Bond shall be payable in forty equal annual instalments from the date of issue as detailed on the reverse of the Bond, but the Provincial Government shall have the option to pay any instalment or instlments at any time before the due date or dates of payment or to pay off any bond completely at any time before the due date of the payment of the fortieth instalment.

(5) Interest shall be calculated and paid by rounding off the pies to the nearest anna, viz., six pies and above shall be taken as one anna and any amount below six pies shall be eliminated.

5. Issue of Bonds : On receipt of a requisition under sub-rule (1) of rule 3, the Bank, after verification of the specimen signature of the Requiring Officer which is recorded with it and operative, shall issue the Bond or Bonds for and on behalf of the Provincial Government.

6. Enfacement and delivery of Bonds : (1) The Bonds may be enfaced for payment of instalments at Dacca Office of the Bank or such Treasury or Sub-Treasnury in East Pakistan, as may be mentioned in the requisition or subsequently chosen by the holder of the Bond and the Bank shall enface or reenface the Bonds for such payment.

(2) In case the enfacement is made at a Treasury or Sub-Treasury the Bank shall forward the Bond or Bonds to the

said Treasury or Sub-Treasury (hereinafter referred to as the Paying Office), under intimation to the Requiring Officer.

(3) On receipt of a Bond from the Bank, the Paying Office shall ask the obligee by a notice to take delivery of the Bond. The Bond shall be delivered to the obligee or his duly authorised agent on proper identification and after taking proper receipt.

(4) In case the bond is enfaced at the Public Debt Office itself, the Public Debt Office will follow the procedure detailed in sub-rule (3) above.

(5) If after a period of one year from the date of intimation to the obligee, any Bond remains undelivered to or unclaimed by him, the Paying Office shall return it to the Bank for safe custody.

7. Payment of instalments under Bonds : (1) Payment of instalments due on a Bond shall be made and acknowledged in the following manner :—

The payment shall be made on presentation of the Bond itself at office of enfacement and subject to compliance by the obligee with such formalities as the Public Debt Office may prescribe and subject to the signing by the obligee of a receipt in Form No.III.

(2) Notwithstanding anything contained herein, the Public Debt Office may pay the instalment or instalments due on a Bond where the payment is to be made at a Treasury or Sub-Treasury, by warrant payable at such Treasury or Sub-Treasury.

8. Issue of duplicate bonds and sub-division, consolidation and renewal of bonds : (1) If the person entitled to a Bond applies to the Bank alleging that the Bond has been lost, stolen or destroyed or has been defaced or mutilated, the Bank may, on proof to its satisfaction of the loss, theft, destruction, defacement or mutilation of the Bond, subject to such conditions and on payment of such fees as are prescribed in these rules, order the issue of a duplicate Bond payable to the applicant.

(2) If the person entitled to a Bond applies to the Bank to have the Bond consolidated with other like Bonds or to have it sub-divided or to have it renewed, the Bank may, subject to such conditions and on payment of such fees as are prescribed in these rules, cancel the Bond or Bonds and order the issue of a new Bond or Bonds.

(3) When a duplicate Bond is issued or a Bond is renewed or registered in favour of a new holder, the face value of the duplicate or new Bond shall be the same as that of the original Bond. When Bonds are consolidated, the face value of the new Bond shall be the aggregate of the face values of the Bonds consolidated. When a Bond is sub-divided, the aggregate of the face values of the new Bond shall be the same as the face value of the Bond sub-divided, but the face value of any such new Bond must be Rs.100 or multiples thereof. In all such cases, the instalments paid under the old Bonds in lieu of which the duplicate or new Bonds are issued shall be shown as paid off on the reverse of the corresponding duplicate or new Bonds and a declaration shall be signed by the peresons, in whose favour the duplicate or new Bonds are issued, in Form No. IV, discharging the Provincial Government from all liabilities in respect of such instalments, before the duplicate or new Bonds are issued to them.

(4) The person to whom a duplicate Bond or a new Bond is issued under this rule shall be deemed to have been recognised by the Bank as the holder of the Bond; and a duplicate Bond or a new Bond so issued to any person shall be deemed to constitute a new contract between the Provincial Government and such person and all person deriving title thereafter through him.

(5) When a Bond is lost, stolen, destroyed, mutilated or defaced, the person entitled thereto shall apply to the Public Debt Office of the Bank for the issue of a duplicate Bond in the manner as laid down hereunder with a statement showing the particulars such as the number and the amount of the Bond.

(6) The Bank may, by its order, suspend payment of instalment of the Bond or postpone the making of any order or the registration of any transfer of the Bond until the vesting order has been made. The application for the issue of a duplicate Bond in place of a Bond which is alleged to have been lost, stolen, destroyed, mutilated or defaced wholly or in part shall be accompanied by :—

(a) a statement of the following particulars, namely :—
  - (i) the person in whose name the Bond was issued;
  - (ii) the last year for which the instalment due on the Bond has been paid;
  - (iii) the person to whom such payment was made;
  - (iv) the place at which the Bond was, for the time being, enfaced for such payment;
  - (v) the circumstances attending the loss, theft, destruction, mutilation or defacement; and
  - (vi) whether the loss or theft, was reported to the police;

(b) the post office registration receipt for the letter containing the Bond if the same was lost in transmission by registered post;

(c) a copy of the police report, if the loss or theft was reported to the Police;

(d) where the last payment of instalment was not made by warrant issued by the Public Debt Office, a letter signed by the Officer of the Treasury where instalment was last paid, certifying the last payment of instalment on the Bond and stating the name of the party to whom such payment was made;

(e) any portion or fragments which may remain of the lost, stolen, destroyed, mutilated or defaced Bond; and

(f) an affidavit sworn before a Magistrate testifying that the applicant is the legal holder of the Bond and that the Bond is neither in his possession nor has it been transferred, pledged or otherwise dealt with by him;

and a duplicate of the letter to the Public Debt Office, but not of its enclosures, shall also be sent to the treasury where instalment is payable.

(7) The Bank shall, if it is statisfied of the loss, theft, destruction, mutilation or defacement of the Bond, order the Public Debt office to issue a duplicate in lieu of the original Bond.

(8) Notwithstanding anything contained in these rules, the title to a lost, stolen, destroyed, mutilated or defaced Bond may be determined by the Bank by its order vesting title to the Bond.

9. Service of notices : Subject to the provisions of the Act, any notice required to be given by the Bank under these rules may be served by registered post, but every such notice shall also be published by the Bank in the local *Official Gazette*, and on such publication shall be deemed to have been delivered to all persons for whom it is intended.

10. Transfer of bonds of Official Trustees : Where the Bank contemplates making, with reference to any Bond, any order which it is empowered to make under these rules and before the order is made, the Bank receives from a Court in Pakistan an order to stay the making of such order, the Bank shall either,—

(a) hold the Bond together with any instalment unpaid or accruing thereon until further orders of the Court are received, or

(b) apply to the Court to have the Bond transferred to the Official Trustees appointed for East Pakistan pending the disposal of the proceedings before the Court.

11. Circumstances requiring renewal of bonds : (1) It shall be at the option of the Bank to treat a Bond which has been mutilated or defaced as a Bond requiring issue of a duplicate Bond under rule 8 or mere renewal under this rule. A holder of a Bond may be required by the Public Debt Office to receipt the same for renewal in any of the following cases, namely :—

(a) if the Bond is torn or in any way damaged or unfit, in the opinion of the Public Debt Office;

(b) if the Bond having been enfaced three times for payment of instalments is presented for re-enfacement; and

(c) if in the opinion of the Public Debt Office, the title of the person presenting the Bond for payment of instalment is irregular or not fully proved.

(2) When requisition for renewal of a Bond has been made under sub-rule (1), payment of any further intalment thereon may be refused until it is receipted for renewal in the manner as laid down by the Bank and actually renewed.

(3) Subject to the provisions of these rules and to any general or special instructions of the Bank, the Public Debt Office may, by its order, on the application of the holder renew, sub-divide or consolidate a Bond or Bonds provided that the Bond or Bonds has or have been receipted in Form Nos. V, VI or VII, as the case may be.

12. Information and inspection : (1) No person shall be entitled to inspect, or to receive information of any Bond in the possession or custody of the Provincial Government or from any book, register, or other document kept or maintained by or on behalf of the Provincial Government in relation to Bonds or any Bond save in such circumstances and manner and subject to such conditions as may be prescribed by the Bank.

(2) Any person requiring information regarding a Bond in the custody of the Public Debt Office may apply to that office in writing stating the form in which the information is required.

(3) Every such application shall state with precision the particulars (namely the number and the face value) of the Bond and shall contain a statement of the purpose for which the information is required and of the interest of the applicant in the Bond. If any of the above particulars are not known to the applicant, the Bank may on application in writing being made to it, direct the Public Debt Office at its discretion, to supply the required particular or particulars, if available, to the applicant subject to such conditions and on payment of such fees, if any, as it may prescribe.

(4) If the applicant asks for any information in respect of a Bond which has been renewed, consolidated, or sub-divided otherwise than in the name of the person who has renewed, consolidated or sub-divided the Bond or asks for inspection of such Bond, or any register or book kept or maintained in the Public Debt Office in respect thereof or of any entry of such Bond in such register or book, the application shall be refused. The register or the book shall mean the register or the book in which the Bond is entered, registered or referred to.

(5) If the applicant asks for inspection or information in respect of a Bond which has been cancelled on payment of the amount due in respect thereof, it shall be referred to, as disposed of under the orders of the Bank.

(6) In any other case, the Public Debt Office may, subject to the provisions hereinafter contained, grant a certified copy of any entry in any register or book maintained or kept by that office relating to any Bond, on being satisfied that the Bond in question has stood in the name of the applicant or of a person in whom the applicant has a representative interest in the Bond in respect of which the application is made.

(7) The Public Debt Office may, under a special order of the Bank, supply any information regarding a Bond referred to in sub-rules (2) and (3) which is directed to be supplied by such an order.

(8) If an applicant asks for—

(a) any ifnormation from the record of the Public Debt Office or the Bank in connection with a Bond,

(b) a copy of any document from the record, and

(c) inspection of any record generally or any document or documents specifically, the application shall be

referred to and disposed of subject to the provisions of sub-rule (1) under the order of the Bank.

(9) If the application relates to the grant of permission for inspection of a warrant issued for payment of an instalment or of information relating to payment of instalment for specific year or years, the application may be granted by the Bank provided the applicant was the person to whom the instalment was paid.

(10) No information from any document or record in respect of the proceedings instituted by the Bank under section 9 of the Act shall be granted by the Bank.

(11) Every applicant shall before any information is supplied or permission for inspection granted to him execute a Bond of Indemnity as nearly as may be in Form No.VIII for the amount as hereinafter mentioned :—

(a) the Bond of Indemnity for grant of information or inspection under any of the sub-rules (4) to (7) shall be for twice the value of unpaid instalments of the Bond or Bonds involved; and

(b) the Bond of Indemnity for grant of information or of permission for inspection under sub-rules (8) and (9) shall be for such amount as may be determined by the Bank.

(12) Every applicant shall before any information is supplied to him under this rule pay a fee of Re. 1 for each Bond in respect of which any information is supplied and a fee of Re.1 shall be paid for each certified copy granted.

(13) The Bank may waive the execution of a Bond of Indemnity or may forego the fees either wholly or partly payable to the Bank under sub-rule (12) above or may do both.

13. Fees : The following fees shall be paid in respect of applications under rule 8 of these rules, namely :—

For each renewed, consolidated, sub-divided or duplicate Bond 4 annas *per cent.* if the *new* Bond does not exceed in amount Rs.400, and Re. 1 if the new Bond exceeds that sum.

14. Payment of instalments : Payment of any instalment under any Bond at any paying office shall be subject to the following considerations :—

(i) that the Bond has been duly enfaced for payment at that Paying Office and that the relative enfacement advice has been properly recorded in its registers; that

(ii) if the person claiming payment claims as heir, transferee, executor, administrator of the estate, guardian, or attorney, of the person entitled to the Bond, necessary documents in support of such claim have been produced and registered in the Paying Office.

15. Powers of Bank in procedural matters : All matters relating to the issue and management of the Bonds not covered by these rules, including the keeping of accounts and maintenance of registers, payment of instalments under the Bonds, enfacement and re-enfacement of the Bonds and registration of such enfacements and re-enfacements, changes in the ownership of the Bonds and documents of title relating to the Bonds in the Paying Offices, shall be dealt with in accordance with such instructions as the Bank may prescribe.

16. Form of security bond referred to in sections 9(8) and 13(1) of the Act : The security bond referred to in sub-section (8) of section 9 and sub-section (1) of section 13 of the Act shall be in Form No. IX.

Form No. I

[Under Rule 3(1)]

Requisition for the Issue of bonds under section 58(2) of the East Bengal Act XXVIII of 1951

No............... Date.....................

To

The Manager,
State Bank of Pakistan,
Public Debt Office,
Dacca.

Dear Sir,

Please issue the Bond/Bonds as detailed in the Schedule below :—

The Schedule.

Serial No.	The name, father's name and full address of the person on whose name the Bond or Bonds are to be issued.	Total amount (both in fig. and in words for which the Bond or Bonds are to be issued. Please state here the amount of the assessment in multiples of Rs. 100 only.	The denomination or denominations in which the Bond or Bonds are to be issued. In multiples of Rs. 100 only.	The location of the Public Debt Office of the State Bank or Treasury or Sub-Treasury at which payment of the instalment is to be made.	Remarks
(1)	(2)	(3)	(4)	(5)	(6)

Your's faithfully.

Seal

Signature,
Collector/Dy. Commr./Addl.
Collector of Revenue......

Form No. II

[Under Rule 4(1)]

The Government of East Pakistan

[Non-Negotiable Bond) Rs. ....At three per cent

No. .... Dated the ....

Non-negotiatble Bond carrying interest at three percentum per annum issued under section 58(2) of the East Bengal State Acquisition & Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

The Governor of East Pakistan hereby promises to pay to ....(name, father's name and full address of the payee) .... at the Public Debt Office of the State Bank of Pakistan, Dacca, Treasury or Sub-Treasury, situated in East Pakistan at which this Bond may be enfaced for payment by the State Bank of Pakistan, a sum of Rupees .... only with interest at three percentum per annum in forty equal annual instalments from the date of issue of this Bond, as detailed in the instalment table on the reverse, each instalment falling due for payment on the ....of the year concerned.

Rs .... No. ....

Dated the ....

By order of the Governor of East Pakistan.

Governor, State Bank of Pakistan.

(Reserve)

Instalment Table

	Year (1)	Amount of principal payable (2)	Amount of interest payable (3)	Total Amount payable (4)	Actual date of payment with initial of the paying officer. (5)
1st	( )		21st	( )	
2nd	( )		22nd	( )	
3rd	( )		23rd	( )	
4th	( )		24th	( )	
5th	( )		25th	( )	
6th	( )		26th	( )	
7th	( )		27th	( )	
8th	( )		28th	( )	
9th	( )		29th	( )	
10th	( )		30th	( )	
11th	( )		31st	( )	
12th	( )		32nd	( )	
13th	( )		33rd	( )	
14th	( )		34th	( )	
15th	( )		35th	( )	
16th	( )		36th	( )	
17th	( )		37th	( )	
18th	( )		38th	( )	
19th	( )		39th	( )	
20th	( )		40th	( )	

Form No. III

[Under rule 7(1)]

Receipt for instalments under the Bonds issued under section 58(2) of the East Bengal State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951).

Received from the office of State Bank/Government Treasury/Government Sub-Treasury at..................instalment/ instalments under the Bond as follows :

No. and date of the Bond	Amount for which the Bond was issued.	Amount of yearly instalment	The year for which instalment and interest were due.	Amount of interest	Name of the holder of the Bond.
		Rs. As P		Rs.as. ps.	
1	2	3	4	5	6

Total............

Deduct Income-tax..............

at the rate of.............

Net interest............

Add Instalment............

Net payable................

Total amount received (in words)..........Signature............

(Address and date)

(State whether holder or holder's attorney or Administrator).........

Form No. IV

[Under Rule 8(3)]

Declaration Form

Received in lieu of Bond(s) No. (s)..................................... a new Bond No.. of the face value of Rs.................................. (Rupees..............................)

out of which ...... instalments aggregating Rs..........

(Rupees ....) have already been paid by the Bank to me/my predecessors in interest and to which I have no claim.

I hareby declare that notwithstanding the face value of the Bond now given to me the unsatisfied claim on the Bond, which includes accrued and accruing interest, does not exceed.

Rs..........................
(Rupees................)
Date........................
Witness :-
(i) ....
(ii)..............

Payable in................
Signature................
Address...................

Form No. V

[Under Rule 11(3)]

Form Of Endorsement For Renewal of a Bond

Received in lieu hereof a renewed Bond payable to (Name of holder).................the instalments under which are payable at..............Office of the State Bank/Government Treasury/ Government Sub-Treasury.

Signature of the holder/duly authorised representative of (name of holder)............
Address..................
Date....................

Form No. VI

[Under Rule 11(3)]

Form Of Endorsement For Subdivision of a Bond

Received in lieu hereof .... Bonds fpr Rs............. respectively payable to (name of holder), with instalment payable at.......Treasury.

Signature of the holder/duly authorised representative of (name of holder and address) ....
Date...........................

Form No. VII

[Under Rule 11(3)]

Form Of Endorsement For Consolidation of Bonds

Received in lieu hereof a new Bond payabe to.................... (name of holder).................. for Rs .... by consolidation with Bond or Bonds Nos...........(mentioning the numbers and amounts of the other (Bonds desired to be consolidated with it and specifying the bonds) with instalment payable at...............Treasury.

Signature of the holder duly authorised representative of (name of holder)........
Address) ....
Date....................

Form No. VIII

[Under Rule 12(11)]

Form of Indemnity Bond.

Whereas I/we....................
son of..........................
resident at.....................
(and............................
son of.......................
resident at).......................
claim to be entitled (...............) :
(here state in what capacity claim to the Bonds is made)

to the Bonds (s) specified in the schedule hereunder written and have represented to the State Bank of Pakistan, Public Debt Office, that the said Bond(s) has/have been.............and have applied to the State Bank of Pakistan, Public Debt Office ....for an Inspection of the said Bond(s) and also for all the other information and particulars respecting the said Bonds(s) and whereas the State Bank of Pakistan, Public Debt Office......... has agreed to give inspection and to afford to me/us all information and particulars affecting the said Bonds(s). I/we oblige myself/ourselves my/our heirs and assigns whatsoever.

(to be omitted if bond taken from one person only)

(jointly and severally) to guarantee and defend and relieve the State Bank of Pakistan, Public Debt Office, and the Provincial Government to the ...... extent of Rs..............from all and any claim, question and expenses which may be raised against or incurred by the State Bank of Pakistan, Public Debt Office..................or the Provincial Government in reference to the said Bond (s).

In wi hness hereof I/we have subscribed my/our name(s) this day of Signed by the within mentioned in the presence of

Applicant's signature

The Schedule referred to in the foregoing Bond.

Form No. IX

[Under Rule 16]

Security Bond

This Agreement is made on the.....................day of............

Between ....

son of.............................

resident of....................

of the one part and the State Bank of Pakistan of the other part.

Whereas I/we am/are represent the true and lawful owner(s) of the Bonds specified in the Schedule 'A' hereto annexed.

And whereas I/we have applied to the State Bank of Pakistan, Public Debt Office....................for................. of the said Bonds and the said Bank have consented so to do upon my/our giving security of Rs............to meet a claim by a rightful owner to the said Bonds in case there shall be such a claim.

Now, those present withness that in pursuance of the aforesaid agreement I/we hereby oblige myself/outselves to make good the claim of the rightful owner in respect of the said Bonds and I/we hereby further agree that this Bond may be held by the said Bank and the said Bank assign the Bond to the rightful owner of the said Bonds.

In witness whereof I/we have subscribed my/our name (s) this day of......Signed by the within mentioned in the presence of ....

Principal.

I/we................

Between.............

son.....................

resident of...............

hereby undertake to make good any claim to the rightful owner of the Bonds mentioned in the schedule hereto in case the principal (s) makes(s) default in payment of the claim by virtue of the above agreement.

Signed by the withing mentioned in the presence of ....

Surety.

Schedule "A" referred to in the Security Bond

Nature and description of the Bonds	Number	Date of Issue	Amount

By order of the Government,

G. Ahmed,

Pt, Secy, to the Govt. of East Pakistan

LAND DEVELOPMENT TAX ORDINANCE, 1976

(No. XLII of 1976)

An Ordinance to provide for levy of a land development tax.

Whereas it is expedient of provide for the levy of a land development tax;

Now, therefore, in pursuance of the Proclamations of the 20th August, 1975, and 8th November, 1975, and in exercise of all powers enabling him in that behalf,---- President is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement.-(1) This Ordinance may be called the Land Development Tax Ordinance, 1976.

(2) It extends to the whole of Bangladesh except the Chittagong Hill Tracts.

(3) It shall be deemed to have come into force on fourteenth day of April, 1976. (1st Baisakh 1383 BS)

2. Definition.-In this Ordinance, unless there is anything repugnant in the subject or context-

(a) "body" means body of individuals, whether incorporated or not, and includes any company, firm, society, association, organisation or authority by whatever name called."

(aa) "Deputy Commissioner" includes an Additional Deputy Commissioner;

(aaa) "head of a body" means a chairman, managing director, director, partner, manager, secretary or any other officer or agent of the body actively concerned in the conduct of the business or affairs thereof;"

(b) "land" includes land covered with water at any time of the year, benefits arising out of land and things attached [to the earth or permanently fastened to anything attached to the earth;

The learned author further adds the following under "benefit to arise out of land' in his "India Registration Act"-

"Benefit to arise out of land."-The right to recover assessment from tenants is a benefit arising out of land.

Venkaji Vs. Shidramapa (1895) 19 Bom 663, 667; And so is the right to recover market dues upon a piece of land. *Sikandar Vs. Bahadur (1905) 27 All 462, 463.*

But the right to Government under an Act to levy tolls and to lease it or to lease market dues is neither benefit arising out of, not an incident of, ownership of land. *Mangalaswami Vs Subbia Pillai (1911) 34 Mad 64.*

A transfer of future rents payable in respect of land is a transfer of a benefit to arise out of land, but not a transfer of rents which have already accrued. *ME Molla Sons Ltd Vs Official Assignee, Rangoon 63 IA 349, 38 Bom LR 1011.*

A right to hold a market is an incident of the ownership of land. *Ganesh Singh Vs Sitla Baksh 5 Luck 504, 131 IC 65.*

The right of the manager of a Hindu temple, thought involving the holding of immovable property forming part of the endowments of the temple, is not a benefit arising out of land. *Bhagwant Genuji Vs Gangabisan Ramgopal (1141) Bom 71, 42 Bom LR 750.*

Where a licence allows a licensee to prospect the managanese ore on the licensor's property and to mine ore at certain rates per ten acres, the licence involves a transfer of benefit to arise out of land and things attached to the earth. *Kanhaiyalal Vs Jerome D'Costa (35) A, Nag 302 Nag 833 (FB).*

Machinery fixed to their basis by bolts and nuts, although easily removeable is not moveable property. *Official Liquidator Vs Shri Krishna Deo (59) All 247.*

The amount of degree of annexation is a matter to be taken into consideration. But along with it, the intention of the parties must be considered. So if a tenant of a premises attaches machinery therein for a factory, it must be presumed that he attached the same with the intention of removing it. *Achiar Vs Custodian (53) A Hyd 14.*

(c) "land taxes" means-

(i) the development and relief tax payable under the Finance (Third) Ordinance, 1958 (EP Ordinance LXXXII of 1958),

(ii) the additional development and relief tax payable under the Finance Act, 1967 (EP Act XVII of 1967).

(iii) the local rate payable under the Basic Democracies Order, 1959 (President's Order 18 of 1959); and

(iv) the primary education cess payable under the Finance Act, 1974 (XLIV of 1974);

(d) "non-agricultural land" has the same meaning as assigned to it in section 2(4) of the Non-Agricultural Tenancy Act, 1949 (EB Act XXIII of 1949);

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "Revenue Officer" includes any officer whom the Government may appoint to discharge all or any of the functions of a Revenue Officer under this Ordinance or any rules made there-under;

(g) "year" means a Bengali year commencing on the first day of Baishakh.

3. Land Development Tax.–(1) There shall be levied and collected for every year commencing on the first day of Baishakh, 1983 BS, on all lands a tax to be called land development tax at the rates specified below, namely :

(a) agricultural land other than lands used for cultivation of tea, coffee, rubber or for orchards].

if the total land held by a family or body for the whole year or for more than six months is–

(i) not more than 2.00 acres.	there poisha per decimal subject to a minimum of one taka;.
(ii) more than 2.00 acres but does not exceed 5.00 acres.	six taka for 2.00 acres plus fifteen poisha per decimal for the land in excess of 2.00 acres;
(iii) more than 5.00 acres but does not exceed 10.00 acres.	fifty-one taka for 5.00 acres plus thirty six poisha per decimal for the land in excess of 5.00 acres.
(iv) more than 10.00 acres but does not exceed 15.00 acres.	two hundred thirty-one taka for 10.00 acres plus sixty poisha per decimal for the land in excess of 10.00 acres;
(v) more than 15.00 acres but does not exceed 25.00 acres.	five hundred thirty-one take for 15.00 acres plus ninety five poisha per decimal for the land in excess of 15.00 acres;
(vi) more than 25.00 acres.	fourteen hundred eighty-one taka for 25.00 acres plus one taka and forty-five poisha per decimal for the land in excess of 15.00 acres;
(aa) "agricultural land used for cultivation of tea, coffee or rubber or for orchards	one taka and ten poisha per decimel;";]
(b) non-agricultural land–	
(i) in any area within the police stations mentioned in the First Schedule to this Ordinance.	one hundred taka per decimal, if the land is used for commercial or industrial purposes; twenty taka per decimal, if the land is used for residential or other purposes;
(ii) in any area within the municipalities at the district head-quarters mentioned in the Second Schedule to this Ordinance	twenty taka per decimal, if the land is used for commercial or industrial purposes; six taka per decimal, if the land is used for residential or other purposes;
(iii) in any other area	fifteen taka per decimal, if the land is used for commercial or industrial purposes; five taka per decimal, if the land is used for residential or other purposes".]

(2)

(3) The land development tax shall be assessed by the Revenue Officer in such manner as may be prescribed.

(3A) Any person aggrieved by any classification of land or assessment of land development tax made by a Revenue Officer may prefer an appeal to such authority, withing such time and in such manaer may be prescribed.

(4) On the commencement of this Ordinance, all rent, land revenue and land taxes shall, notwithstanding anything contained in the laws under which they are payable, cease to be payable :

Provided that nothing in this sub-section shall apply to any arrear of such rent, land revenue or land taxes.

(5) For the purposes of this section, in relation to a person, includes such person and his wife, son, unmarried daughter, son's wife, son's son and son's unmarried daughter :

Provided that an adult and married son who has been living in a separate mess independently of his parents from before the commencement of this Ordinance and his wife, son and unmarried daughter shall be deemed to constitute a separate family:

Provided further that in the case of any land held under any waqf, waqf-al-al-aulad, debutter or any other trust where the beneficiaries have no right to alienate such land as their personal property, all such beneficiaries together shall be deemed to constitute a separate family in relation to such land,

"**3A Exemption.**-The Government or any Officer authorised by it in this behalf may by order in writing and subject to such conditions as it or he may specify therein exempt from payment of land development tax, any public graveyard, public cremation grounds or place of public prayer or religious worship.

Explanation.-Place of public prayer or religious worship shall have the same meaning as in section 151A of the State Acquisition and Tenancy Act, 1950 (E.B. Act XXVIII of 1951)."

3AA. Special provision relating, to assessment of land development tax in respect of certain lands.-Notwithstanding anything contained in section 3, in assessing the land development tax in respect of the land mentioned in the Third Schedule to this Ordinance, the amount which was payable as rent or land revenue in respect of such lands under the State Acquisition and Tenancy Act, 1950 (EB Act XXVIII of 1951), shall be excluded from the total amount payable as land development tax for such lands.

4. Power of Government to amend schedule.-The Government may, by notification in the official gazette, add any other police-station to the schedule or exclude therefrom any police-station or any area of any police station.

4A. Bar of proceedings in Civil Courts.-No suit or other legal proceedings shall lie in any Civil Court to set aside or modify any classification of land or assessment of land development tax made by a Revenue Officer or any ordeer made by any authority in any appeal under this Ordinance;]

5. Power to make rules.-The Government may, by modification in the official gazette, make rules for carrying out purposes of this Ordinance.

First Schedule

[see section 3(1)(b)(i)]

District	Police-stations
Dhaka	Mirpur, Mohammadpur, Lalbag, Kotwali, Sutrapur, Ramna, Dhanmondi, Tejgaon, Cantonment, Demra, Motijheel, Gulshan and Keraniganj.
Narayanganj	Narayanganj, Bandar, Fatulla and Siddirganj.
Gazipur	Tongi and Joydebpur.
Chittagong	Kotwali, Panchlaish, Double Mooring, Port Police-station, Sitakunda, Hathazari and Rangunia.
Khulna	Kotwali, Daulatpur and Phultola.]

Second Schedule

[See section 3(1)(b)(ii)]

Mymensingh, Tangail, Jamalpur, Faridpur, Noakhali, Comilla, Sylhet, Rajshahi, Rangpur, Dinajpur, Bogra, Pabna, Barisal, Patuakhali, Jessore and Kushtia.

Third Schedule

[See section 3AA]

All the lands included in mouza Kasba Sylhet Municipality JL No. 91, Kasba-Anbarkhana JL No. 92, Tarapur Tea garden JL No. 76, Lakatuna tea garden 1st Part JL No. 75 Bagbari J.L. No. 90, Brahman Sashan JL No. 77, Brahman Chara tea garden JL No. 78, Kasba Akhalia JL No. 88, Kasba Rainagar JL No. 97, Kasba Koituk JL No. 100, Sadipur 2nd Part JL No. 98, Malnichera Tea garden JL No. 78, and Tultika JL No. 99 of Sylhet Sadar thana measuring approximately 4000 acres commonly known as Kasba-Sylhet and held rent free before the commencement of the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951) excluding lands belonging to tea gardens and lands settled by the Government with any person at any time".]

LAND DEVELOPMENT TAX RULES

1. Short Title.-These rules may be called the Land Development Tax Rules, 1976.

2. Definitions.-In these rules, unless there is anything repugmant in the subject or context,—

(a) "appellate authority" means the Deputy Commissioner or an Officer authorised by him;

(b) "assessment" means the assessment of the land development tax under the Ordinance;

(c) "assessment roll" means the land development tax assessment roll;

* * * * * .

(e) "Ordinance" means the Land Development Tax Ordinance, 1976;

(f) "tax" means the land development tax at the rates specified in the Ordinance.

3. Preparation of Assessment Roll.-(1) The Revenue Officer shall prepare assessment roll for the whole of a mouza or part thereof at a time.

(2) Before preparing the assessment roll, the Revenue Officer shall, in the manner as the Government considers necessary, make publicity of the date and time of the preparation of the said roll in the mouza or part thereof.

Notification No. SRO 302-L 76 dated 4-9-76-In exercise of the powers conferred by section 5 of the Land Development Tax Ordinance, 1976 (Ordinance XLII of 1976), the Government is pleased to make the following rules, nemely:

(3) The assessment shalll be made on the basis of available public documents and such other documents, if any, as may be produced by the concerned persons. The Revenue Officer may also make such other enquiry as he deems necessary.

4. Classification of Land.-(1) The Revenue Officer shall for the purpose of making assessment under the Ordinance, classify a land into a land used for commercial, industrial, residential or for other purpposes.

(2) If any land is used partly for commercial or industrial purposes and partly for residential or other purposes, the land shall be classified as land for industrial or commercial purposes and shall be assessed accordingly.

(3) If as a result transfer or devolution, a plot is subdivided and possessed by more than one person without effecting separation of jama, such plot shall be treated as one plot for the purposes of assessment under these rules.

6. Publication of Assessment Roll.-The Revenue Officer shall publish the preliminary assessment roll prepared and signed by him by placing a copy of the roll in the office of the Revenue Officer for public inspection and wide publicity of the fact of such publication shall be made in the converned mouza or part thereof.

7. Appeal.-(1) Any person aggrieved by classification of land or assessment made by the Revenue Officer may prefer an appeal briefly stating the grounds of such appeal to the appellate authority];

(2) Every memorandum of appeal shall be presented within fifteen days from the date of publication of the assessment roll under rule 6.

(3) Every appeal shall be accompanied by a process fee in court fee stamps as specified below :

(a) for each notice whether directed to one or more persons where such persons reside in the same mouza, Taka one and twenty-five poisha only; and

(b) where the notice is to be served in different mouzas, a separate fee for each mouza shall be charged at the rates as in clause (a).]; and

8. Disposal of Appeal.-The appellate authority shall, after giving the appellant an opportunity of being heard, give such order on the appeals as he may think fit and cause the correction of the assessment roll accordingly.

9. Final Assessment Roll.-After the disposal of the appeals under rule 8, the Revenue Officer shall finally publish the assessment roll duly signed by him in the manner specified in rule 6.

(2) A copy of the final assessment roll shall be sent to the Government by the Revenue Officer.

(3) The Government shall, on receipt of the assessment roll under sub-rule (2) by notification in the official Gazette, declare, with regard to any mouza or part thereof, that assessment roll has been finally published for all land in such mouza or part thereof; and such notification shall be conclusive proof of such publication.

9A. Special Powers of The Deputy Commissioner.- Notwithstanding anything in these rules, the Deputy Commissioner shall—

(a) have powers to correct obvious errors, such as, arithmetical or clerical errors before or after the final publication of the assessment roll; and

(b) on receipt of an application or on receipt of an official report for correction of any entry that has been made or procured by fraud or otherwise in the assessment roll either before or after final publication thereof, after consulting the relevant records and making such other enquiries as he deems necessary, direct correction or, as the case may be, excision of the relevant] entry.

9B. Revision of Assessment Roll.-(1) On receipt of an application from any person or on receipt of an official report, the Revenue Officer, if satisfied that conversion of any land from agricultural to non-agricultural, or from commercial or industrial to residential land or vice-versa has been made, may, after giving all concerned a hearing and making such other inquiry as he deems necessary, revise an assessment roll either before or after its final publication.

(2) Any person aggrieved by the revision under sub-rule (1) may prefer an appeal in the manner laid down in rule 7 and the provisions of the said rule shall mutatis mutandis apply to such revision case.

10. Collection of Taxes.-The Rule contained in the GE Manual 1958, shall mutatis mutandis apply for the purpose of collection of taxes levied under the Ordinance.

(As modified upto 29th July, 1977)

QUESTION.

1. How far is it correct to say that the Permanent Settlement was the Magna Charta of the landed aristrocracy whereas the East Bengal State Acquistion and Tenancy Act, 1950 is the Magna Charta for the *raiyat*? Give reasons for your answer.

2. Describe the circumstances that led to the passing of the East Bengal State Acquisition and Tanancy Act, 1950.

3. What are the aims and objects of the East Bengal State Acquisition and Tenancy Act, 1950? It this Act an exhaustive and a complete code in itself? When this Act came into force?

(4) Write explanatory notes of the following terms :—(1) complete usufructuary mortgage, (2) consolidation, (3) *raiyat*, (4) cultivating *raiyat*, (5) cultivating under-*raiyat*, (6) derelict tea garden, (7) encumbrance, (8) estate, (9) *hat* or *bazar*, (10) holding, (11) total holding, (12) subsistence holding, (13) economic holding, (14) homestead, (15) *khas* land, (16) land in *khas* possession, (17) land, (18) non-agricultural tenant, (19) proprietor, (20) rent, (21) rent-receiver, (22) tenant, (23) tenure, (24) alluvion, (25) diluvion, (26) reformation in *situ*.

5. Define rent. Who are and who are not rent-receivers?

6. What is meant by "tenant" under the East Bengal State Acquisition and Tenancy Act, 1950? Is *bargadar* a *tenant*?

7. Under what circumstances is a person who cultivates land under the system of *'adhi,' 'barga'* or *'bhag,'* a tenant? Under the original Bill certain provisions were made for the portection of the *adhiars, bargadars* or *bhagchasis*? Why those provisions are omitted in the East Bengal State Acquisition and Tenancy Act, 1950?

8. Dicuss the basic provisions of the East Bengal State Acquisition and Tenancy Act, 1950 affecting substantive rights of the rent-receivers.

9. What is the underlying principle of section 3 of the East Bengal State Acquisition and Tenancy Act, 1950?

10. Summarise the special provisions for the acquisition of the interests of rent-receivers under the East Bengal State Acquisition and Tenancy Act, 1950.

11. Upon what grounds the notifications of the 2nd April, 1950 acquiring the rent-receiving interests were challenged in the case of *Jibendra Kishore v. Province of East Pakistan*? Discuss the principles of law laid down in this case.

12. What are the consequences that have ensued after the acquisition of the rent-receiving interest?

13. Enumerate the interests that have vested after acquisition upon the Provincial Government.

14. State the rules regarding service of notice upon the rent-receivers for furnishing returns? What is the penalty for non-compliance of the direction contained in the notice?

15. State the provisions relating to *ad interim* payment to a rent-receiver for the acquisition of his interest under the East Bengal State Acquisition and Tenancy Act, 1950. Who will determine the amount of *ad interim* payment? Is there any provision for appeal against the order of the officer determining the amount? If so, to whom appeal will lie? Can *ad interim* payment be attached?

16. What are the special provisions regarding management of rent-receiving interests held under *wakf, wakf-alal-aulad, debutter* or any other religious trusts under the East Bengal State Acquisition and Tenancy Act, 1950?

17. Who is a *chakran* tenant? Can such a tenant acquire occupancy right under the East Bengal State Acquisition and Tenancy Act, 1950? Can his landlord remove him from his homestead land?

18. How can a *chakran* tenant get restoration of possession of his agricultural or horticultural land in case he is ejected otherwise than by a decree or order of a Civil Court or an order of the Collector? Whom should he move for such an order? Can he prefer an appeal against the order? If so, what is the period of limitation for filing the appeal?

19. Discuss the provisions regarding draft and final publication of the record-of-rights under the East Bengal State Acquisition and Tenancy Act, 1950.

20. What particulars are to be recorded in the record-of-rights?

21. What is the procedure for preparation or revision of record-of-rights?

22. (a) What is the evidentiary value of the record-of-rights?

(b) What is the weight of evidence of the record-of-rights?

23. "Every entry in a record-of-rights prepare or revised under section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect." How the presumption is rebutted?

24. What are the special provisions for correcting mistakes in the record-of-rights under the East Bengal State Acquisition and Tenancy Act, 1950?

25. State the provisions for revision of record-of-rights under the East Bengal State Acquisitions and Tenancy Act, 1950.

26. What are the presumptions as to rents settled under the East Bengal State Acquisition and Tenancy Act, 1950?

27. Enumerate the different categories of lands that a tenant can retain under the East Bengal State Acquisition and Tenancy Act, 1950.

28. State the different classes of lands that a tenant cannot retain under the East Bengal State Acquisition and Tenancy Act, 1950.

29. What is the provision of law as to the aggregate quantity of land that a tenant can retain under section 20 of the East Bengal State Acquisition and Tenancy Act, 1950? Can a rent-receiver retain his *cutchery*? Who will allot the land to the tenant? State whether the tenant has the option to choose the land that he likes to retain.

30. Section 20 of the East Bengal State Acquisition and Tenancy Act, 1950 restricts the retention of certain classes of lands to a certain limit by certain classes of persons or tenants under the Provincial Government. Describe the classes of lands, the classes of persons and the extent of the limit as to the retention of such lands with exceptions.

31. When can a tenant retain lands more than the prescribed limit under the East Bengal State Acquisition and Tenancy Act, 1950?

32. Define *hat* or *bazar.* Discuss the law relating to acquisition of *hats* and *bazars* with reference to decided cases.

33. Can a fishery be acquired under the East Bengal State Acquisition and Tenancy Act, 1950?

34. What is the position of *wakf, wakf-alal-aulad, debutter* or any other trust property under the East Bengal State Acquisition and Tenancy Act, 1950? Can such a property be acquired? Discuss with reference to decided cases.

35. How fair and equitable rents of a rent-receiver are determined under the East Bengal State Acquisition and Tenancy Act, 1950?

36. How fair and equitable rents of *raiyats* and under-*raiyats* are determined under the East Bengal State Acquisition and Tenancy Act, 1950?

37. How fair and equitable rents of non-agricultural tenants are determined under the East Bengal State Acquisition and Tenancy Act, 1950?

38. State the provisions for assessment of rent of a service tenant under the East Bengal State Acquisition and Tenancy Act, 1950.

39. What is the procedure for settlement of rent and preparation of settlement rent-roll under the East Bengal State Acquisition and Tenancy Act, 1950?

40. In what matters jurisdiction of the Civil Court is barred under section 30 of the East Bengal State Acquisition and Tenancy Act, 1950? Discuss.

41. Summaries the provisions for the assessment of compensation for the acquisition of interests under the East Bengal State Acquisition and Tenancy Act, 1950?

42. How gross assets and net income of a rent-receiver are calculated under the East Bengal State Acquisition and Tenancy Act, 1950?

43. What is *malikana*? Is it acquirable under the East Bengal State Acquisition and Tenancy Act, 1950? Discuss with reference to a leading case.

44. What are the rates of compensation payable to a rent-receiver for the acquisition of his interest under the East Bengal State Acquisition and Tenancy Act, 1950?

45. The provision of section 37 of the East Bengal State Acquisition and Tenancy Act, 1950 providing different rates of compensation to rent-recivers is *ex facie* descretionary and, therefore, void. Discuss the proposition with reference to a leading case.

46. What are the rates of compensation provided in the East Bengal State Acquisition and Tenancy Act, 1950 for the acquisition of different classes of *khas* lands?

47. State the provisions for assessment of compensation for the acquisition of land held under *wakf, wakf-alal-aulad, debutter* or any other trust under the East Bengal State Acquisition and Tenancy Act, 1950.

48. Discuss the provisions of law as to preliminary and final publication of Compensation Assessment-roll under the East Bengal State Acquisition and Tenancy Act, 1950.

49. What are the consequences that have ensued after the publication of the notification declaring that a compensation assessment-roll has been finally published?

50. What are the provisions regarding payment of compensation to a rent-receiver for the acquisition of his interest under the East Bengal State Acquisition and Tenancy Act, 1950? How the dispute as to title and apportionment of compensation is determined?

51. What is the manner for payment of compensation under the East Bengal State Acquisition and Tenancy Act, 1950?

52. Describe the procedure for realisation of arrears of rent by an out-gong rent-receiver under the East Bengal State Acquisition and Tenancy Act, 1950.

53. Discuss the provisions of the East Bengal State Acquisition and Tenancy Act, 1950 realting to indebted rent-receivers.

54. Discuss the provisions of the East Bengal State Acquisition and Tenancy Act, 1950 for scaling down of debts of a rent-receiver.

55. Enumerate the categories of debts which can be and which cannot be scaled down under section 70 of the East Bengal State Acquisition and Tenancy Act, 1950. In what manner such debts are scaled down?

56. Who is authorised to scale down the debts of a rent-receiver? What is the procedure for scaling down of debts under the East Bengal State Acquisition and Tenancy Act, 1950?

57. What is the meaning of sub-letting? Can a tenant sub-let his land under the East Bengal State Acquisition and Tenancy Act, 1950?

58. Is there any provision in the East Bengal State Acquisition and Tenancy Act, 1950 restricting the right to sublet by a *raiyat* of his holding? If so, what are the penalties for sub-letting?

59. Distinguish between lease and sub-lease.

60. What are the rights and liabilities of a non-agricultural tenant under the East Bengal State Acquisition and Tenancy Act, 1950?

61. Enumerate the rights and liabilities of a *raiyat* under the East Bengal State Acquisition and Tenancy Act, 1950.

62. Define holding. How the holdings are divided under the East Bengal State Acquisition and Tenancy Act, 1950?

63. Describe the incidents of the holding of a *raiyat* under the East Bengal State Acquisition and Tenancy Act, 1950.

64. Describe the incidents of the holding of a *raiyat* under the East Bengal State Acquisition and Tenancy Act, 1950, on the following heads:—

(1) use of land, (2) transfer of holding, (3) ejectment, (4) enhancement of rent and (5) devolution of the holding on the death of a *raiyat*.

65. Discuss the rights and liabilities of a riparian tenant under the East Bengal State Acquisition and Tenancy Act, 1950.

66. Explain clearly the law of alluvion and diluvion as laid down in the East Bengal State Acquisition and Tenancy Act, 1950.

67. Give a summary of the rights of a *raiyat* under the East Bengal State Acquisition and Tenancy Act, 1950—(1) when his land is lost by diluvion and (2) when his land is gained by gradual accession from the recess of a river or a sea.

68. What are the provisions as to transferability of holding of a *raiyat* under the East Bengal State Acquisition and Tenancy Act, 1950?

69. Explain the manner of transfer of a *raiyat's* holding under the East Bengal State Acquisition and Tenancy Act, 1950.

70. What are the limitations as to transfer of holding under the East Bengal State Acquisition and Tenancy Act, 1950?

71. Enumerate the circumstances under which the interest of a *raiyat* in his holding is extinguished under the East Bengal State Acquisition and Tenancy Act, 1950.

72. What limitation has been imposed by the East Bengal State Acquisition and Tenancy Act, 1950 on the rights of a *raiyat* in the matter of creating mortgages on his holding? Show that such limitation is imposed for the benefit of the *raiyat* and that the *raiyat* cannot through off this benefit at his option.

73. A *raiyat* enters into a complete usufructuary mortgage of a portion of his holding for 20 years. What is the legal effect of this transaction?

74. Write a short essay on the law of pre-emption as laid down in section 96 of the East Bengal State Acquisition and Tenancy Act, 1950?

75. What is the procedure laid down in the East Bengal State Acquisition and Tenancy Act, 1950 for exercising the right of pre-emption? State whether second appeal lies against the order of pre-emption.

76. State the cases in which the right of pre-emption is not available.

77. Who are the parties in an application for pre-emption? Discuss.

78. Who can apply for pre-emption under the East Bengal State Acquisition and Tenancy Act, 1950? Within what time can a co-sharer file his application for pre-emption if notice of transfer is not given to him? Is there any rule of priority among the pre-emptors?

79. Do you find any point of contrast in the law of pre-emption as embodied in section 26F of the Bengal Tenancy Act, 1885 and section 96 of the East Bengal State Acquisition and Tenancy Act, 1950?

80. *(a)* Is the right of pre-emption a personal right?

(b) How long the right of pre-emption subsists?

(c) Does the exercise of the right of pre-emption involve a sale?

81. What are the restrictions on alienation of land by aboriginals under the East Bengal State Acquisition and Tenancy Act, 1950?

82. On what ground the rent of a *raiyat* or a non-agricultural tenant may be enhanced under the East Bengal State Acquisition and Tenancy Act, 1950? Is there any limit to enhancement of rent?

83. What are the grounds of reduction of rent of a *raiyat* and a non-agricultural tenant under the East Bengal State Acquisition and Tenancy Act, 1950?

84. What are the provisions as to amalgamation and sub-division of holding under the East Bengal State Acquisition and Tenancy Act, 1950?

85. Summarise the provisions as to consolidation of holdings under the East Bengal State Acquisition and Tenancy Act, 1950.

86. How a scheme for consolidation of holding is prepared under the East Bengal State Acquisition and Tenancy Act, 1950?

87. Who can apply for consolidation of holdings? Describe the procedure for consolidation of holdings.

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INDEX

Page

Page

Page

Compensation Assessment-roll :

Complete usufructuray mortgage :

Page

Consolidation of holdings :

Co-sharer tenant :

***Cutchery* :**

Cultivating-*raiyat* :

Cultivating under-*raiyat* :

Page

Land Laws of Bangladesh

VOL–IV

1. *The Non-Agricultural Tenancy Act, 1949*
2. *The Non-Agricultural Tenancy Rules, 1950*
3. *The Land Reforms Ordinance,1984*
4. *The Land Reforms Rules,1984*
5. *The Acquisition of Immovable Property Ordinance,1982*
6. *The Acquisition of Immovable Property Rules,1982*
7. *The Requisition of Immovable Property Rules,1982*
8. *The Agricultural Labour (Minimum Wages) Ordinance,1984*
9. *The Land Acquisition Act,1894*
10. *The Acquisition of Waste Land Act,1950*
11. *The Hats & Bazars (Establishment & Acquisition) Ordinance,1959*

1979, conducted by Brig. K. M. Siraj Jinnat, FRCS, Genito-Urinary Surgeon in the Combined Military Hospital, Dhaka I was unable to go again to the chambers of Advocates in search of Indian decisions.

I am grateful to Mr. Justice A. K. M. Nurul Islam for sparing his valuable time to go through this book and for writing a foreword to this humble work.

I am equally indebted to my wife who has taken keen interest in the publication of this book

I express my sincere thanks to Mr. Asrarul Hossain, Barrister-at-Law, former Attorney General of East Pakistan, Mr. Rafique-ul Huq, Barrister-at-Law,Mr. Shafique ahmed, Barrister-at-Law, who is a part-time Principal of the City Law College for their help with some Law Reports.

A word of appreciation is due firstly to Mr. Md. Matiur Rahman, B.A, LL. B, of B-46/F-13, Motijheel AGB Colony and Mr. Gholam Murtaza, B.A, LL.B, an Assistant Director Finance, Water Development Board, Dhaka for their valuable assistance.

During the publication of this book in 1980 I was in a hurry to Proceed to Tanzania to take up my assignment as a Professor in the Faculty of Law of the University of Dar-es Salaam. So far I remember, i have seen the final proof of this book up to page 80, leaving the entier responsibility of its publication with Mr. Md. Matiur Rahman and Mr. Gholam Murtaza whose names I have already mentioned.

In spite of their best endeavours. it was not possible to publish the book free from mistakes that escaped the careful attention of the proof-readers. I offer my regrets for this inconvenience and refer the readers to the errata provided at the end of the book.

L. Kabir

Dar es Salaam,
Tanzania,
April 16, 1982.

CONTENTS

CHAPTER –IV
Under-tenants

CHAPTR –V
Provisions as to transfer of non-agricultural land

CHAPTERS VI and VII (Omitted).

CHAPTER –VIII
Improvements

CHAPTER –IX
Other incidents of non-agricultural tenancies.

CHAPTER –X (Omitted.)

CHAPTER –XI
Judicial Procedure

CHAPTER –XII
Miscellaneous

Appendix

Contents

Table of Cases

INTRODUCTION

In all countries there are mainly two classes of lands, namely, agricultural land and non-agricultural land. Agricultural land generally means land used for agricultural and horticultural purposes; non-agricultural land means land used for purposes other than agriculture and horticulture.

The incidents of tenancies of agricultural land were provided in the Bengal Tenancy Act, 1885 and on its repeal in the State Acquisition and Tenancy Act, 1950. The incidents of tenancies of Non-Agricultural land were first governed by the Transfer of Property Act, 1882 and then exclusively by the Non-Agricultural Tenancy Act, 1949.

Now I would like to give an account of the earlier position of the non-agricultural tenants and the law governing their tenancies. It will be useful to trace the rights of the tenants in homestead lands; the incidents of the tenancy of land used for purposes other than agriculture; the circumstances under which the tenants could erect structures; whether they could remove the fixtures and materials of buildings and huts after the termination of the tenancy; what was the extent of their right in mines and quarries; whether occupancy right could be acquired in fisheries; whether forest right could create any interest in land; what was the customary right as to the use of burning places and burial grounds.

S. C. Mitra (afterwards a Judge of the Calcutta High Court) had discussed this subject in his Tagore Law Lectures delivered in 1895 on Land Laws of Bengal.[1] I may quote with reverence the following extracts from his learned lectures :

There are no legislative provisions as to non-agricultural lands, except such as are contained in the Transfer of Property Act, the Indian Contract Act and stray sections in the Revenue and Rent laws. Act X of 1859 and Act VIII (B.C.) of 1869 did not touch the question of the rights and liabilities of

1. S. C. Mitra, *The Land Laws of Bengal, Tagore Law Lecutres*, 1895 (Calcutta : R.C. Cambray & Co., 1921, 2nd Ed.) p. 473-498.

THE *NON-AGRICULTURAL TENANCY ACT, 1949[1]

(Act No XXIII of 1949)

[20th October, 1949]

An Act to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in †Bangladesh.

Whereas it is expedient to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in †Bangladesh;

It is hereby enacted as follows :-

CHAPTER -I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the *Non-Agricultural Tenancy Act, 1949.

(2) It extends to the whole of †Bangladesh.

(3) It shall come into force on such date[2] as the *Government may, by notification in the Official Gazette, appoint.

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1. For Statement of Objects and Reasons, see Dhaka Gazette, Extra-ordinary, dated the 14th January, 1949, Pt. IVA, p. 111; for proceedings in the Assembly, see the proceedings of the meetings of the East Bengal Legislative Assembly held on the 12th March, 2nd, 4th, 8th, 9th and 11th April, 1949.

   The Act was extended to those areas of the district of Mymensingh which were known as "Partially Excluded Areas" immediately before the coming into force of the Constitution which was abrogated by the Presidential Proclamation of the 7th October, 1958, vide notification No. 4997 L.R;, dated the 19th October, 1949, published in Dhaka Gazette, Extraordinary, dated the 20th October, 1949, Pt. I. p. 830.

   * The words "East Bengal" were omitted by P.O. 48 of 1972.

   †The words "East Pakistan" were replaced by the reference to Bangladesh by P.O. 48 of 1972.

2. The Act came into force with effect from the 20th October, 1949. vide notification No.4995 L.R., dated the 19th October, 1949, published in Dhaka Gazette, Extraordinary, dated the 20th October, 1949, Pt. I.p. 830.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) "Bengali year" means a year ending on the last day of Bengali month of Chaitra;

(2) [Deputy Commissioner][3] includes any officer appointed by the *Government to perform all or any of the functions of a [Deputy Commissioner][3] under this Act;

(3) "Landlord" means a person immediately under whom a non-agricultural tenant holds;

(4) "Non-agricultural land" means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include—

(a) a homestead to which the provisions of section 182 of the Bengal Tenancy Act, 1885, apply,

(b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years, and

(c) land which is held for purposes connected with the cultivation or manufacture of tea:

Provided that where an order has been made under section 72 converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land;

3. The words within square brackets were substituted for the word "Collector" by E.P. Ord. IX of 1967, s.3 which was approved with amendments by the Provincial Assembly of East Pakistan at its Meeting held on the 25th January, 1968.

*The words "Provincial Government" were replaced by the word "Government" by P.O.48 of 1972.

(5) "Non-agricultural tenant" means a person who holds non-agricultural land under another person with the consent of that person and is, or but for a special contract would be, liable to pay rent to such person for that land and also includes the successors-in-interest of the former but does not include any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned, by the person to whom such occupier is, or but for a special contract would be, liable to pay rent for such occupation;

Explanation.—In this clause "premises" means any building such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building.

(6) "prescribed" means prescribed by rules made under this Act;

(7) "pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials;

(8) all words and expressions used but not defined in this Act and used in the Bengal Tenancy Act, 1885, or the Transfer of Property Act, 1882, have the same meanings as in those Acts.

Note:—Section 2 of the Non-Agricultural Tenancy Act, 1949 provides a number of definitions of which "non-agricultural land" and "non-agricultural tenant" deserve special notice.

According to section 2, clause (4) the following are non-agricultural lands:

(1) Lands which are used for purposes not connected with agriculture or horticulture.

(2) Lands which are held on lease for purposes not connected with agriculture and horticulture.

But the following are not non-agricultural lands :—

(a) Homestead to which the provisions of section 182 of the Bengal Teancy Act, 1885, apply.

(b) Lands which were originally leased for agricultural or horticultural purposes, but are used for non-agricultural purposes without the consent of the landlord for less than twelve years.

(c) Lands held for cultivation or manufacture of tea.

(d) Lands held for the exercise of forest rights, rights over fisheries and rights to minerals.[4]

It has been observed by Chunder, J., that land which comes within the Bengal Tenancy Act and which is excluded from the operation of the Act of 1949, is only land mentioned in sub-clauses *(b)* and *(c)* of clause 4 of section 2 of the Act.[5]

Section 182 of the Bengal Tenancy Act referred to in clause *(a)* of section 2(4) provides: "When a *raiyat* or an under-*raiyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shll be that of a *raiyat* or an under-*rayat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiyats* or under-*raiyats*, as the case may be."

It may be mentioned in this connection that section 182 of the Bengal Tenancy Act, 1885 has lost its importance after the enactment of the State Acquisiton and Tenancy Act, 1950 which has repealed the former Act.[6] After the introduction of the Act of 1950 there is no distinction between a *raiyat* and an under-*raiyat*. The status of an under-*raiyat* has been upgraded to the status of a *raiyat* who is now the *malik* of his agricultural land. Now the position is that the homestead of a *malik* is governed by the Act of 1950 and excluded from the operation of the Non-Agricultural Tenancy Act, 1949.

In a Calcutta case,[7] A, a tenure-holder sold a four annas share of the interest in certain plot which she had along with

4. See the Non-Agricultural Tenancy Act, 1949, Ss. 5(c) (ii) and 85.
5. *Achala Sundari Dasi v. Satish Chandra Mondal*, (1953) 57 CWN 703: AIR 1954 Cal. 28.
6. The State Acquisiton & Tenancy Act, 1950, S. 80.
7. *Kiriti Bhushan Shaha v. Tarubala Dasi*, AIR 1957 Cal. 511

another land in the same village under the same landlord as a *mukarari raiyat*. The evidence showed that on the land thus sold there was a hut and a granary where A's mother used to reside. The structure on the land fell down 30 or 32 years ago and thus on the date when the West Bengal Non-Agricultural Tenancy Act came into force the land was not used as a homestead. B, who had 12 annas share in the property sold, applied for pre-emption under section 24 of the Act. It was held that in these circumstances the land was not homestead to which the provisions of section 182 of the Bengal Tenancy Act applied. The land sold was thus a non-agricultural land within the meaning of section 2(4) of the Act. [8]

A mere reading of the definition of "non-agricultural land" would establish that for obvious reasons legislature has excluded the lease of structures with land but the cases of tenants of non-agricultural land, who have erected structures thereon, are governed by the provisions of the Act. The provisions of sections 4 and 5 of the Act would further establish this proposition.[9] The same view was taken by Hamoodur Rahman, C.J., A. Sattar and M. R. Khan, JJ., of the Supreme Court of Pakistan in holding that "A non-agricultural lease, according to the provisions of the Act is a lease in respect of non-agricultural land alone, but does not include any building or hut occupied by a tenant if such building or hut has been erected or is owned by the lessor. A non-agricultural lease in respect of both land and huts standing thereon is clearly outside the ambit of the Act."[10]

In the case of *Moulana Hafez Athar Ali v. Abdul Taher Bhuiya*,[11] Asir, J., pointed out that although there trend of decisions previous to the enactment of the Non-Agricultural Tenancy Act indicated that the primary test was to find out the original purpose of the tenancy yet according to the

8. *Ibid.*
9. *Abdul Maleque Lashkar v. Begum Tayabunnessa*, PLD 1966 Dhaka 217; 18 DLR 618 at 625 : PLR 1964 Dhaka 1190.
10. *Abdul Mutaleb v. Mst. Rezia Begum*, PLD 1970 (SC) 185: 22 DLR (SC) 134.
11. (1960) 12 DLR 758: PLD 1961 Dhaka 349.

language as employed under section 2(4) (b) of the Act, user becomes a very important deciding factor in determining whether a particular land is non-agricultural. It is difficult to hold that parcels of land though originally comprised in a *raiyati* holding and used by non-cultivators for purposes other than agricultural or horticultural, should still retain the original character of an agricultural land.[12]

The proviso to section 2(4) states that where an order has been made under section 72 of the Act converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land.

Section 2(5) defines "non-agricultural tenant" as a person who holds non-agricultural land under another person with the consent of that person and is, or but for a special contract would be, liable to pay rent to such person for that land and also includes the successors-in-interest of the former. But a person is not a non-agricultural tenant if he holds the land with structures which is erected and owned by the landlord to whom he is, but for a special contract would be, liable to pay rent for his occupation of such permises. In other words, when the structure on the land cannot be said to have been erected and owned by the tenant but erected and owned by the landlord, such a tenant cannot be called a non-agricultural tenant. In the case of *Abdul Mutaleb v. Mst. Rezia Begum,*[13] it was held that a non-agricultural lease is a lease in respect of non-agricultural land alone, but does not includ any building or hut occupied by a tenant if such building or hut has been erected or is owned by the lessor.

The defintion of non-agricultural tenant read with section 88 of the Act points to the fact that the term is intended to include those against whom decrees for ejectment have been passed as well. And the expressions "has acquired" and "have acqired" under section 3(2) of the Act show that the term

12. *Ibid.*
13. (1969) 22 DLR (SC) 134.

"non-agricultural tenant" is intended to apply only to persons who are alive when the Act came into force.[14]

In a Calcutta case,[15] it was held that for the purpose of applying the West Bengal Non-Agricultural Tenancy Act, 1949 to proceedings pending at the commencement of the Act, the words "Non-agricultural tenant" must be taken to include a tenant whose tenancy was determined by a notice to quit but who remained in possession in spite of the notice to quit and a decree for ejectment. "It is true that for the purpose of the above decision their Lordships were only concerned with the meaning of the term, 'non-agricultural tenant' in connection with a suit which was pending at the date of commencement of the Act. But the same extended meaning would also apply to the case of a tenant whose tenancy had expired for some reason or other before the Act came into force but for whose ejectment the suit was filed after the Act had come into force."[16] A monthly tenant of non-agricultural land is included in the definition of a non-agricultural tenant and is entitled to the rights given under the Act to a non-agricultural tenant.[17] By the definition of non-agricultural tenant in section 2(5) of the Act read with section 3(1) which says that there are two classes of non-agricultural tenants : (a) Tenants' and (b) 'under-tenants,' it is clear that an under-tenant is a non-agricultural tenant too.[18]

Where the effect of the lease is that although at the inception of the tenancy the tenant is given the land with structures which are standing thereon, but the tenant is given the right to demolish the structures and holds the land with his own structures thereon and for this there is to be no diminution of rent, then even if it be allowed that at the

14. *Khagendra Nath Saha v. Naresh Chandra Roy,* PLR 1952 Dhaka 403: 4 DLR 598: PLD 1954 Dhaka 1.
15. *Bamapati Bhattacharjya v. Sm. Lakshmi Bibi,* (1952) 57 CWN 533 : AIR 1953 Cal. 780.
16. *Krishna Lal Saha v. Panchanan Dutta,* (1959) 64 CWN 240.
17. *A.F.M. Kutubudowla v. Hafez Muhammad Sadeq,* (1959) 11 DLR (SC) 401 : PLD 1959 (SC) 446.
18. *Sudhangshu Kumar Saha v. Sm. Prabalata Nandy,* (1964) 69 CWN 836.

inception of the tenancy he was not a non-agricultural tenant still from the time when the structures are demolished he becomes a non-agricultural tenant as defined by the Act,19 But when the structure on the land cannot be said to have either been erected and owned by the tenant but erected and owned by the landlord, though such erection was through the agency of and by the money advanced as loan by the tenant it comes within the negative part of the definition of "non-agricultural tenant" under the Act.[20]

If the non-agricultural land by itself does not constitute the subject matter of a separate tenancy and is a fraction of lands held partly for agricultural and partly for non-agricultural purpose, the tenant holding such non-agricultural land cannot be said to be a non-agricultural tenant within the meaning of section 2(5) of the Act.[21]

The tenant-at-will is not a tenant within the meaning of section 2(5) of the Act and therefore, not protected by the Act.[22]

Where the tenant died before the commencement of the Act of 1949, the heir of such tenant cannot be treated as successor-in-interest within the definition of non-agricultural tenant as given in section 2(5).[23] In the instant case Chowdhury, C.J. observed : "The definition of non-agricultural tenant was introduced for the first time in the Act XXIII of 1949 and it was not in the Act IX of 1940 where the definition of tenant only refers to the tenant and not his heirs and the Act of 1949 was not in force when the tenant died. Therefore, the defendant cannot be treated as a successor-in-interest within the definition of a non-agricultural tenant under the Act XXIII of 1949."

The word "person" in section 2(5) and section 3(2) must be read as a person other than the proprietor or tenure-holder.[24]

19. *Mobarak Hossain v. Pundarikakshya Basu*, AIR 1956 Cal. 168.
20. *Prabhu Dayal v. S.M. Tinkari Bala*, (1972) 77 CWN 110.
21. *Kinuram Sadhukhan v. Hazi Md. Yusuf*, (1958) 63 CWN 939.
22. *Sudhir Kumar Majumder v. Dhirendra Nath Biswas*, AIR 1957 Cal. 625 : 61 CWN 23.
23. *Delbar v. Sarada Sundari*, PLD 1962 Dhaka 548 : 13 DLR 334.
24. *kiriti Bhushan Shaha v. tarubala Dasi*, AIR 1957 Cal. 511.

The expression "holds" in section 2(5) of the Act should be interpreted is its plain meaning, as a strict interpretation would create difficulties when the execution proceedings are taken up.[25] In the instant case Shahabuddin, C.J. observed: "Normally, the expressions used in an Act have to be taken in their plain meaning unless such an interpretation results in an absurdity and defeats the object of the Act. Now, in respect of the Act of 1940, as a strict interpretation of the term "non-agricultural tenant" would have defeated the object of the pro-viso to section 3 of the Act, the learned Judges of the Calcutta High Court and of the Federal Court of undivided India interpreted the word "holds" in its popular sense. The same meaning, as it appears to us, has to be given to the expression "holds" in the definition in the Act of 1949, as a strict interpretation of that expression would create difficulties when the execution proceeding is taken up even if under section 88 one goes back up to the date of the execution proceedings. But there can be no justification for the extension of the interpretation beyond the limit indicated above and......."

The word "premises" in sub-section (5) of section 2 of the Act means any building, such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonary, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building. Where, therefore, the deed of lease executed in favour of a person stated that the premises demised consisted of an area bounded on all sides by a boundary wall and included a shed used as a jute godown, the roof of which was resting on one of the boundary walls, and in this godown was also situated a jute press, it was held that, that was clearly a "premises" within the exception mentioned under sub-section (5) of section 2 of the Act.[26]

In the case of *Faizur Rahman v. Jogendra Mohan Das*,[27] the words and phrases "premises" and "appertaining" have

25. *Khagendra Nath Shaha v. Naresh Chandra Roy*, (1952) 4 DLR 598: PLD 1954 Dhaka 1 : PLR 1952 Dhaka 403.
26. *Md. Sohrab Ali v. Bazlur Rahman Mia*, (1968) S.C.M.R. 341.
27. PLD 1951 Dhaka 120 : 3 DLR 115.

been explained by Guha, J. The facts of this case are that a pucca building consisting of 3 rooms and the land on which the building stood and also the open space lying to the west of the building were let out and the demised leasehold is described as consisting of "Nishkar lands etc. and the pucca building" for a tern of tow years with the option of renewal. The lessee failed to exercise the option of renewal and continued to hold the tenancy as monthly tenant. The plaintiffs determined the tenancy by 15 days notice to quit after the expiry of the last day of the month.

The learned Judge explained the words "premises" and "appertaining" in the following terms : "It is well settled that if the land appertainging to a building in necessary for enjoyment of the building, then the building and the land form one 'premises' .... In this lease the demised property is described as "Nishkar land etc. and the pucca building." Of course, if the evidence is that the building and the land to its west from one 'premises', it is different. Reading the lease one finds that the building and the lands have been separately described. So in my view the primary sense of "appertaining" has been excluded."

CHAPTER -II

Classes of non-agricultural tenants.

3. Classes of non-agricultural tenants.—(1) There shall be, for the purposes of this Act, the following classes of non-agricultural tenants, namely.—

(a) tenants, and

(b) under-tenants.

(2) "Tenant" means a person who has acquired from a proprietor or a tenure-holder a right to hold non-agricultural land for any of the the purposes provided in this Act, and includes also the successor-in-interest of persons who have acquired such a right.

(3) "Under-tenant" means a person who has acquired a right to hold non-agricultural land for any of the purposes provided in this Act either immediately or mediately under a tenant and includes also the successors-in-interest of persons who have acquired such a right.

Note:—Section 3 deals with the classes of non-agricultural tenants. Sub-section (1) of this section provides that there are two classes of non-agricultural tenants : *(a)* tenants and *(b)* under-tenants.

Section 3(2) defines a 'tenant' as meaning a person who has acquired from a proprietor or tenure-holder a right to hold non-agricultural land for any of the purposes specified in the Act and includes also the successor-in-interest of persons who have acquired such a right. If the non-agricultural land by itself does not constitute the subject-matter of a separate tenancy and is a fraction of lands held partly for agricultural and partly for non-agricultural purpose, the tenant holding such non-agricultural land cannot be said to be a non-agricultural tenant within the meaning of section 2(5) or a tenant within the meaning of section 3(2) of the Act.[28]

Section 3(3) defines an 'under-tenant' as meaning a person who has acquired a right to hold non-agricultural land for

28. *Kinuram Sadhukhan v. Haji Md. Yousuf,* (1958) 63 CWN 939.

any of the purposes provided in this Act either immediately or mediately under a tenant and includes also the successors-in-interest of persons who have acquired such a right. The word "immediately" means immediately under a tenant. The word "mediately" means mediately under a tenant's under-tenant.

Though sub-sections (2) and (3) of section 3 define a tenant and an under-tenant, both the categories are tenants for the purposes of the Act.[29]

The tenant and under-tenant as defined in section 3 correspond to *raiyat* and under-*raiyat* of the Bengal Tenancy Act. Having regard to sub-sections (1) and (2) of section 5 of the Bengal Tenancy Act, a tenure-holder could not be a *raiyat*. The intention of the legislature in enacting the Non-Agricultural Tenancy Act was to exclude a tenure-holder from the definition of "tenănt" in that Act.[30] We have observed that the word 'person' in section 2(5) and section 3(2) must be read as a person other than the proprietor or tenure-holder.[31]

The word 'tenant' in section 3(2) does not include ex-tenant.[32] An ex-tenant is not entitled to the benefit of section 106 of the Transfer of Property Act and, therefore, cannot claim that a suit for his ejectment will not lie unless notice as provided in section 106 of the Transfer of Property Act has been served on him.[33] In the instant case the ex-tenant was in possession after the expiry of his lease and his total possession was for a period of less than twelve years.

We have seen before[34] that the expression 'holds' in the definition in this Act is to be interpreted in its popular sense as a strict interpretation of that expression would create difficulties when the execution proceedings are taken up. The expressions 'has acquired' and 'have acquired' occurring in

29. *Shibsankar Nandy v. Probartak Sangha*, AIR 1967 SC 940 : (1967) 2 SCJ 469.
30. *Kriti Bhusan v. Tarubala Dasi*, AIR 1957 Cal. 511.
31. See p. 45.
32. *Nihar Ranjan Pal v. Musammat Nurannessa Chowdhurani*, (1958) 10 DLR 472.
33. *Ibid.*
34. See p. 45.

section 3(2) of the Act show that the term "non-agricultural tenant" is intended to apply to persons who are alive when the Act came into force.[35] This suit was filed in 1943 and Gopinath, predecessor-in-interest of the appellants, was not alive then and the present appellants were then trespassers, that definition would not apply to them. Accordingly it was held that where after the death of a temporary tenant his heirs continued in possession and a suit was instituted by the landlord against them for ejectment before the Act came into force, such heirs were not entitled to the benefit of the Act.

4. Purposes for which non-agricultural tenant may hold non-agricultural land.—A non-agricultural tenant may hold non-agricultural land for—

(*a*) homestead or residential purposes;

(*b*) manufacturing or business purposes; or

(*c*) religious or other purposes.

Note:—Section 4 speaks of the purposes for which a non-agricultural tenant may hold non-agricultural land. Under this section a non-agricultural tenant may hold non-agricultral land for three purposes, namely, (*a*) homestead or residential purposes, (*b*) manufacturing or business purposes, and (*c*) religious or other purposes. Under clause (*a*) homestead or residential purposes is one of the non-agricultural purposes. Therefore it follows that non-agricultural land can be held for bulding a dwelling house on the land.[36] In the case of *Sailendra Nath Neogi v. Purnendu Sen*,[37] it was held that "*bonafide* requirement of disputed land" would come with the residuary clause "other purposes" as contemplated in clause (*c*) of section 4 of the Act, relying on the principles of *ejusdem generis*.

35. *Khagendra Nath Saha v. Naresh Chandra Roy*, PLD 1954 Dhaka 1 : 4 DLR 598 : PLR 1952 Dhaka 403.
36. *Shyamapada Bhattacherjee v. Satya Gopal Majumder*, (1963) 67 CWN 599.
37. AIR 1971 Cal. 169 at 171 : 74 CWN 897.

5. Tenancies held by a non-agricultural tenant.—A non-agricultural tenant shall be deemed to hold any non-agricultural land—

(a) for homestead or residential puposes if such tenant is entitled, under the terms of any agreement between himself and the landlord to use or is actually using such land for homested or residential purposes;

(b) for manufacturing or business purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for carrying on therein any commercial or industrial enterprise or any trade or business; and

(c) for religious or other purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for a religious purpose or for any purpose not connected with agriculture or horticulture other than—

(i) the purpsoses specified in clauses (a) and (b), and

(ii) the exercise of any forest-rights or rights over fisheries or rights to minerals in such land.

Note :—Section 5 deals with the tenancies held by a non-agricultural tenant. It enacts a 'deeming' provision prescribing when a non-agricultural tenant shall be deemed to hold a non-agricultural land. Under section 4 a non-agricultural tenant may hold land for three pruposes, namely, (a) for homestead or residential purposes, (b) for manufacturing or business pruposes, and (c) for religious and other purposes. Under section 5 he may be deemed to hold usch land for these purposes if he is endtitled, under the terms of any agreement between himself and his landlord, to use or is actually using the lands (a) for homestead or residential purposes, (b) for carrying any commercial or industrial enterprise, or any trade or business, and (c) for religious purposes or for any purpose not connected with agriculture or horticulture. But a tenant holding the non-agricultural land for religious and other purposes cannot use the land for the

purposes specified in clauses (a) and (b) and for the exercise of any forest-rights or rights over fisheries or rights to minerals. Section 85(1) (b) of the Act also lays down that the Act will not apply to any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land.

CHAPTER -III

Tenants

6. Manner of use of non-agricultural lands.—(1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with any of the purposes for which non-agricultural land may be held under this Act and which does not materially impair the value of such land.

(2) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 7 or section 8 apply shall be entitled—

(a) to erect any structure including any pucca structure;

(b) to erect a mosque, a temple or any other place of worship;

(c) to dig any tank; and

(d) to plant, enjoy the flowers, fruits and other products of, and fell and utilise or dispose of the timber of, any tree on such land.

(3) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 9 apply shall be entitled—

(a) to erect any structure other than a pucca structure;

(b) to plant, and enjoy the flowers, fruits and other products of, any tree, and

(c) to fell, and utilise or dispose of the timber of, any tree planted by him on such land.

Note :—Section 6 lays down the manner of use of non-agricultural land. It states generally that the tenant may use the land in any manner which is not inconsistent with the purpose of the tenancy and which does not materially impair the value of the land. It goes on to state that the tenants to whom sections 7 and 8 apply may erect any structure including a pucca structure, a mosque, a temple or any other place of worship, dig any tank, plant and enjoy the flowers, fruits and other products of, and fell and utilise or dispose of the timber of any tree on such land but the tenants to whom section 9 applies may only erect structure other than pucca

structures and may not dig tank or fell, utilise or dispose of trees not planted by them. Sections 7,8 and 9 referred to in sub-sections (2) and (3) lay down the incidents of two different kinds of tenancies : *(a)* those held for a term of not less than 12 years, *(b)* those held for a term of less than 12 years but more than one year.

Under section 6(2) of the Act the tenants having been in possession of non-agricultural land for 12 years or more have the right to get the benefit as enumerated in sub-clauses *(a)*, *(b)*, *(c)* and *(d)*. According to section 6(3) the tenants having been in possession of non-agricultural land for a term of less than 12 years but more than one year have the right to get the benefit as enumerated in sub-clauses *(a)*, *(b)* and *(c)*.

In the case of *Mritunjoy Pal v. Ram Chandra Sadhu Khan*,[38] where a suit was filed with a prayer for permanent mandatory injunction on the tenant restraining him from making any structure on the suit land, it was held that although at the date of the suit the tenant had no right to erect sturcture, he may acquire right under section 6 of the Act when it became law. In such circumstances the question whether such a tenant is a non-agricultural tenant and entitled to the benefit of section 6 of the Act should be decided before there can be any decree in the suit.

In the case of *Niskar Pan v. Mahadev Ghosh*,[39] a question was raised whether the manner of enjoyment under section 6 of the Act is applicable to tank. It was held that the manner of enjoyment which section 6 prescribes, applies to non-agricultural land simpliciter. The rights given by this section have no relevance to the enjoyment of a tank and there can be no question of enjoyment of a tank with protions separated for each co-sharer. Physically it is impartible and if any person purchases any portion of the tank he is to enjoy in colaboration with others.

In the case of *Banamali Saha v. Subala Dasi*,[40] the point for consideration was whether a teant holding non-

38. (1955) 59 CWN 1039.
39. (1972) 76 CWN 430 : AIR 1972 Cal. 258.
40. (1959) 64 CWN 172.

agricultural land is entitled to get the benefit under section 6(2) (c) of the West Bengal Non-Agricultural Tenancy Act, 1949 to fell and dispose of trees on the land in spite of prohibition to the contrary in the *kabuliyat* and whether the claim for damages for cutting down trees by tenant, would be maintainable. It was held that where the tenant is a non-agricultural tenant governed by the said Act, he is entitled to the benefits of section 6(2) *(c)* of the Act (corresponding to section 6(2) *(d)* of Act XXIII of 1949) and as such the landlord's claim for damages for cutting down the trees in breach of the prohibition contained in the *kabuliyat* would fail.

7. Incidence of certain tenancies—Notwithstanding anything contained in any other law for the time being in force or in any contract—

(1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act, 1882, or if the origin of any tenancy is unknown, or

(2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, has been held for a period of not less than twelve years without any lease in writing, or

(3) if any non-agricultural land has been held under a lease in writing for a period of not less than twelve years but no term is specified in such lease, or

(4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held after the expiration of the time limited by such lease and the total period for which such land is so held is not less than twelve years, or

(5) if the landlord has allowed pucca structures to be erected on any non-agricultural land held under a lease in writing for a period specified therein whether such structures have been erected—

(a) before the expiration of the said period, or

(b) where such non-agricultural land continues to be held with the express or implied consent of the landlord after the expiration of the said period, during the period such non-agricultural land so continues to be held, then—

(i) the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders in unfit for use for any of the purposes specified in section 4;

(ii) [subject to the provision of section 91 of the *State Acquisiton and Tenancy Act, 1950, the interest][41] of the tenant in the non-agricultural and comprised in such tenancy shall, in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property: Provided that in any case in which under the law of inheritance to which such tenant is subject, his other property goes to the State, his interest in such land shall be extinguished, and

(iii) the non-agricultural land comprised in such tenancy or a share or a portion thereof togehter with the interest of the tenant therein shall, subject to the provisions of this Act, [and of section 90 of the *State Acquisition and Tenancy Act, 1950][42] be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

Note :—Section 7 deals with the incidents of several kinds of non-agricultural tenancies as described in sub-sections (1), (2), (3), (4) and (5) :

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41. The words within square brackets were substituted for the words "the interest" by E.P. Ord. IX of 1967.
*The Words "East Bengal" were omitted by P.O. 48 of 1972.

42. The words, figures and commas within square brackets were inserted after deleting comman after the words 'this Act' by E.P. Ord. IX of 1967.

Under sub-section (1) there are two kinds of tenancies : *(a)* Tenancy held from before the Transfer of Property Act, 1882, with or without any lease in writing or *(b)* tenancy whose origin in unknown.

Sub-section (2) deals with tenancy created after the Transfer of Property Act, 1882, without any written lease but which has been held for more than twelve years.

Sub-section (3) deals with tenancy held under a written lease for more than twelve years but without any term.

Sub-section (4) deals with tenanncy under a lease in writing for a specified period but has cotinued after the expiry of the term and the total period of occupation of the tenant is more than twelve years.

Sub-section (5) deals with tenancy where the tenant has erected pucca structures during the term of lease or thereafter with the express or implied consent of the landlord and such a tenancy has been allowed to continue.

Under this section if a non-agricultrual tenant continues to possess any non-agricultural land continuously for twelve years, the Act has given protection to the tenant from eviction. Before this Act, there was no such protection given to such a tenant under any law.[43]

Section 7 makes the protection available (1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act, 1882 or if the origin of the tenancy is unknown, or (2) if such land comprised in any tenancy created after commencement of the Act has been held for a term of not less than twelve years without a lease in writing or (3) if such land has been held for not less than twelve years under a lease in writing but no period is specified therein or (4) if such land held under a lease in writing for a specified period continues to be held with the express or implied consent of the landlord after the expiry of such period and the total period of occupation of such land is not less than twelve years or (5) if the landlord has allowed pucca structures to be erected on any non-agricultural land held under a lease in writing for a specified period whether such structures have been erected before the expiry of the said period or thereafter with the express or implied consent of the landlord *i.e.* after the expiration of the said period and such a tenancy has been allowed to continue.

43. *Krishna Ranjan Chowdhury v. Hem Chandra Das Chowdhury*, PLR 1956 Dhaka 423: 9 DLR 159 at 163; see also *Sarada Chandra Dam v. Jatindra Mohan Chowdhury*, (1953) 5 DLR 391; *Panchumani Dassi v. Bhuban Mohan Mokherjee*, (1954) 59 CWN 243 : 8 DIR 17; *Nihar Ranjan Pal v. Nurannessa Chowdhurani*, PLD 1959 Dhaka 111 : 10 DLR 472.

If these necessary conditions are fulfilled there will be no liability on the part of the tenant to ejectment except on the solitary ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4. It is also stated that subject to the provisions of section 90 of the State Acquisition and Tenancy Act, 1950, the interests of such a tenant in the land comprised in such tenancy are heritable and capable of being transferred and bequeathed in the same manner as the other immovable property of such tenant.

A sub-lessee is not entitled to claim protection under section 7 after termination of lease of his lessor.[44]

We may now deal with computation of the period of twelve years' possession which is the minimum requisite period for a claim for protection from eviction under section 7 of the Act. In the case of *Khagendra Nath Saha v. Naresh Chandra Roy*,[45] one Gopinath possessed the suit land by virtue of a temporary oral lease under the plaintiffs. He occupied the land for over 12 years by putting up na *katcha* shed wherein he had his shop till his death in 1935. Since then the defendants, his hoits, were in possession of the suit land but they were not recognised as tenants by the plaintiffs who brought a suit for ejectment in 1943. The defendants claimed that they were tenants within the definition of the term in Act

44. *Girija Prasad Paul v. The Corporation of Calcutta*, AIR 1972 SC 2391.
45. (1952) 4 DLR 598 : PLR 1952 Dhaka 403 : PLD 1954 Dhaka 1.

XXIII of 1949 and that the Act was retrospective in operation and hence the suit could not succeed. It was held that after the death of Gopinath in 1935, the defendants were mere trespassers and that the Act has no applicability in their case. In delivering the judgement Shahabuddin, C. J. observed : "Now under section 88, the farthest back that we can go is the date of the suit in 1943; If Gopinath was alive at that stage and the tenancy had terminated by the filing of the suit, he could have been taken as coming within the definition of a non-agricultural tenant and if he had died subsequently the appellants could have come within the same definition as his successors-in-interest. But, as pointed out already, Gopinath died in 1935, and the present appellants have all along been trespassers. In the nature of things, the Legislature could not have intended in passing either of these Acts to give protection to persons who were trespassers at the time the Acts came into force."

In the case of *Krishna Ranjan Chowdhury v. Hem Chandra Das Chowdhury*,[46] the point for consideration was whether a tenant, who has not completed 12 years at the time of the institution of the suit for ejectment, can count upon any period during the pendency of the suit, appeal or any proceeding for ejectment of such a tenant under section 88 of the Act. In this case the plaintiff-appellant granted a lease for a period of 10 years to the respondent with effect from the year 1936 and this lease expired at the end of April, 1946. After serving notice on the respondent to quit, the suit was instituted on the 21st May, 1946; and on the 19th of November, 1947, the suit was decreed by the Court of first instance. Against this decision an appeal was preferred. It was urged before the lower Appellate Court that inasmuch as the Sylhet Non-Agricultural Urban Areas Tenancy Act (Assam Act X of 1947) had come into force on the 25th of April, 1947, under section 14 of the said Act, the defendant-tenant was entitled to protection from eviction. But the lower Appellate Court dismissed the appeal holding that the tenant had not completed 12 years at the time of commencement of the said

46. PLR 1956 Dhaka 423 : 9 DLR 159.

Assam Act. Against this decision second appeal was filed in the Dhaka High Court, and the tenant-appellant urged that he was entitled to protection under section 88 of the Non-Agricultural Tenancy Act, 1949. The Court allowed the appeal, holding that the tenant was entitled to protection inasmuch as although he had not completed 12 years at the date of the institution of the suit, he completed 12 years during the pendency of the appeal.

The properiety of this decision was challenged by the plaintiff landlord in the Letters Patent appeal which was heard by Amin Ahmed and Chowdhury, JJ (afterwards C.J.). It was held that the date that should be taken for the purpose of adjudication would be the date of the institution of the suit and that 12 years not having been completed on 21-5-46, the date on which that suit was instituted, the tenant was not entitled to protection against eviction available to a person with 12 years' possession under section 7 of the Act.

In the case of *Nihar Ranjan Pal v. Musammat Nurannessa Choudhurani*,[47] the tenant sought protection under section 7(4) of the Non-Agricultural Tenancy Act against an ejectment suit by the landlord. The tenancy in question came into existence on 28-1-38 and the Non-Agricultural Tenancy Act, 1949 came into force on 20-10-49, *i.e.*, 12 yearys were not complete between the date when the tenancy came into being and on 20-10-49 when the Act came into force. It was held that in view of the provision of section 89A of the Act, the tenant not having completed 12 years between these two dates, he cannot resist the landlord's suit for ejectment.

In the case of *Delbar v. Sarada Sundari*,[48] the question that called for consideration was whether in the absence of recognition by the landlord, the defendant could get the benefit of possession by his father for over 12 years as a non-agricultural tenant and was thereby protected from ejectment under the Non-Agricultural Tenancy Act, 1949. In this case the defendant's father took settlement of the suit land from

47. (1958) 10 DLR 472.
48. PLR 1962 Dhaka 153 : 13 DLR 334 : PLD 1962 Dhaka 548.

the plaintiff's predecessor for 2 years but continued to hold it for over 12 years till 1942, and thereafter, on his death, the defendant has been possessing it as successor-in-interest. The plaintiff instituted the suit in 1946 for ejectment of the defendant on the ground of his being a trespasser and not a tenant. It was held that—

(1) a tenancy-at-will or tenancy by holding over, terminates with the death of the tenant and there remains nothing for his heirs to inherit nor can his heirs be considered as tenant holding over until and unless the landlord recognised them as tenants expressly or by implication.

(2) At the time when the tenant died, he did not acquire any interest in the land as contemplated in section 7(4) of the Act and therefore, his son the defendant does not acquire the right which has been conferred by section 7(4).

(3) To claim the benefit of 12 years of possession under the Act to save himself from ejectment, the tenant must complete 12 years of possession at the date of the institution of the suit. His subsequent possession during the pendency of the suit cannot be counted towards completion of the period of the requisite 12 years.

In delivering the judgment of the Court Chowdhury C.J. observed: "The period of tenant's possession after the institution of this suit for ejectment cannot be taken into consideration as nowhere the Non-Agricultural Tenancy Act of 1949 provides that even if such a tenant did not complete 12 years of possession before the institution of the suit, appeal or execution proceeding pending at the time of the commencement of the Act, he can count upon that period of his possession or any portion thereof afte the suit in calculating 12 years. The material point of time for computation of the period of 12 years is the date of institution of the suit... that as a rule, the date of commencement of the Act shall be taken to be the date of institution of the suit as if the Act was in force at that time. Therefore, his possesssion after the institution of this suit is immaterial for the purpose of protection under the Act of 1949."

In the case of *Kamaruddin Ahmad v. Nripendra Lal Das*,[49] the point for decision was whether the lessee can tack on period from the date of the institution of the suit up to coming into force of the Non-Agicultural Tenancy Act, 1949, in order to complete 12 years' possession. The facts of the case were that a lease was given for a period of 10 years from the middle of May, 1937, up to the middle of April, 1947. The suit was instituted on 21-5-47 *i.e.* a few days after the expiry of the period of the lese for recovery of the disputed property on the ground that the period of lease has expired. The Non-Agricultural Tenancy Act came into operation on 20-10-49 while the suit was still pending in Court and the defendant relied on section 89A of the Act in support of his contention that he has completed the period of 12 years' possssion and could not therefore be ejected from the suit land. It was held that in view of the judicial interpretation of section 89A of the Act, the defendant's possession subsequent to the institution of the suit cannot be tacked to the perod up to the institution of the suit to complete 12 years, as the material point of time for computation of the period of 12 years is the date of the institution of the suit (21-5-47), and the date of commencement of the Act shall be taken to be the date of the institution of the suit, as if the Act was in froce at that time. It was further held that the construction of sections 88 and 89A to include the period from the date of the institution of the suit up to 20-10-49 would lead to a very anomalous position, for, it would be open to a tenant-defendant to adopt dilatory tactics and get his possession extended from time to time, because, if a Court (including all Courts upto the highest Court) could not dispose of the matter for many years, the tenant would automatically get benefits of this.

The word 'term' as used in section 7(3) may indicate a period specified in a lease or a period of occupation according as the context requires.[50]

49. PLD 1964 Dhaka 510: 15 DLR 694.
50. *Indian Iron & Steel Co. Ltd. v. Biswanath Sonar*, AIR 1967 SC 77.

In the case of *Mahadev Ram Kahar v. Tinkari Roy*,[51] it was pointed out that section 7(4) expressly deals with cases of 'holding over' but that is plainly for the purpose of extending the portection of the Act to a large number of 'non-agricultural tenancies' which would not otherwise come under section 7(2) or, even under section 9(1) (b) of the West Bengal Non-Agricultural Tenancy Act (corresponding to section 9(1) *(a)* of Act XXIII of 1949), even if tenancies by holding over are held to be 'without a lease in writing' within the meaning of the Act.

According to Mookerjee J., the true position under the Act seems to be as follows : "Where the period of the tenancy by 'holding over' is more than one year but less than 12 years even when taken along with the period of the 'expired lease in writing' which preceded it, it will have the lesser protection of section 9(1) *(b)* (corresponding to section 9(1) *(a)* of Act XXIII of 1949). If the period of the tenancy by 'holding over' is by itself 'not less than 12 years' it will have the greater protection of section 7(2). It, however, this period be less than 12 years but it is '12 years or more', when taken along with the period of the "expired lease in writing" in the wake of which it followed, it will still have the higher protection of section 7 as contained in section 7(4)".

In the case of *Sibrat Missir v. Sasthi Rathi Karkari*,[52] a tenancy began with a lease on 28-9-29 for 7 years. During the pendency of the lease a second lease was executed which specifically mentioned in the recital that it was "after the expiry of the previous lease." This lease was again for a further period of 7 years. The documents themselves left no room for doubt that the second lease was a continuation of the first lease. It was held that there being a continuation of the lease section 7(4) clearly and specifically applied and the tenant was protected from ejectment. It was further held that it is a continuation of the period, not the continuity of the rent which is to be considered in connection with section 7(4) of the Act of 1949.

51. AIR 1954 Cal. 539 : 58 CWN 651.
52. AIR 1954 Cal. 168 : 57 CWN 912.

Under section 7(5) of the Act, a non-agricultural tenant enjoys a large measure of protection against eviction if he has made some substantial commitments in his holding in the shape of pucca structure with the assent of the landlord. On principle, there is no difference between the case of such a tenant and the case of a tenant who has first taken settlement of the land and then purchased the existing pucca structures from the landlord because in the latter case, the landlord's assent to the continuance of the pucca structures on the tenant's holdings is clear and unequivocal.[53]

For the application to section 7(5) of the Act, the erection or the existence and continuance of the pucca structures must, at least, be shown to have been with the knowledge of the landlord even though it was or might have been against the will of the landlord.[54] It is true that under the Transfer of Property Act, a *kabuliyat*, when accepted by the landlord which acceptance need not be in writing, gives the tenant the status of a lessee under section 105 of the said Act but it is also true that under section 107 of that Act, whenever a lease purports to be for a period, exceeding one year, it must be made or created by or under a registered instrument, signed and executed by both the parties, *i.e.*, by both the lessor and the lessee. A *kabuliyat*, by itself would not satisfy the test, and the position would not be altered or improved by its acceptance by the landlord, at least when such acceptance is oral or in writing unregistered and, therefore, a lease for a period exceeding one year, cannot be created by a unilateral *kabuliyat* even though it be a registered one and even though it be accepted by the landlord orally or by writing unregistered, under the provisions of the Transfer of Property Act. Under the Act of 1949 the position appears to be similar.[55]

Under the West Bengal Non-Agricultural Tenancy Act, 1949, it was held that where the floor of the godown was covered with bricks and cement and the godown up to the roof-level had brick-built walls and the roof was a roof of Ranigunj

53. *M.L. Dalmiya & Co. v. Chinta Haran Mukherjee*,(1958) 62 CWN 505.
54. *Dip Narayan Singh v. Kanailal Goswami*, (1959) 64 CWN 293.
55. *Ibid.*

tiles supported by a frame-work, the structure being substantially made of bricks, was a pucca structure within the meaning of section 7(5) taken with section 2(7) of the Act.[56] It was also held that the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949 must clearly apply to all suits which have been filed after the Act came into force and therefore, the provisions of section 7(5) can be availed of by the tenant.[56]

In a number of English decisions it has been laid down that "to allow a thing to be done there must be some direct or indirect sanction of it." In the case of *Indian Iron & Steel Co. Ltd. v. Gonesh Chandra Bose*,[57] where the landlord gave no consent to the construction of the pucca structure but he promptly filed a suit for mandatory injunction for demolition of the pucca structure, the refusal of the mandatory injunction by the Court and the grant of monetary compensation instead could not be held to amount to any direct or indirect sanction of the construction of the pucca structure. Therefore, if a suit for ejectment is filed afterwards in due time, the plaintiff-landlord cannot be met with the defence that the tenant has acquired a permanent right on the ground that the landlord allowed him to build a pucca structure on the land of the tenancy within the meaning of section 7(5) of the Act of 1949.

Where under a lease, erection of permanent structures on the land is to be at the risk of the lessee and such structures, to be removed within a specified time after the expiry of the lease, are to vest in the landlord on default, though section 7(5) of the Act comes into force before the expiry of the lease, the landlord can eject the lessee on the expiry of the lease.[58]

In the case of *Narayan Chandra Sen v. Sripati Charan Kumar*,[59] the question arose as to the exact meaning of the words "allow pucca structure to be erected." It was held that

56. *Krishna Lal Saha v. Panchanan Dutta*, (1959) 64 CWN 240.
57. (1959) 64 CWN 365.
58. *Pundarikaksha Basu v. Sardar Chanda Singh*, AIR 1967 Cal.538.
59. (S.A.No. 425 of 1962 Cal.) cited in the case of *Shambhunath Pal v. Indian Iron & Steel Co. Ltd*, AIR 1975 Cal.194.

the landlord in that case must allow or permit the tenant to construct at the time of erection or before it. The word "allow" does not mean any permission subsequent to the erection because in the statute the words "to be erected" are there. The question of permission or allowing after the construction, therefore, does not arise. The Court also held : "On the finding arrived at by the learned Court of appeal that the landlord allowed the pucca structure to be retained it is not therefore possible to agree with his further conclusion that the provisions of section 7(5) will apply. In order that those may apply, it is necessary for the tenant to prove that quite apart from the question of landlord allowing him to retain structure the landlord did allow the structures to be erected."

In the case of *Pundarikaksha Basu v. Sardar Chandra Singh*,[60] Chatterjee J. discussed the point at lengh to ascertain what was really the meaning of the word "allow" in section 7(5) of the Act. The learned Judge held that the word "allow"involved some positive sanction by the landlord *i.e.* the landlord must state positively either directly or indirectly that he would allow the tenant to raise pucca structures.

In the case of *Shambhunath Pal v. Indian Iron & Steel Co. Ltd.*,[61] it was observed : "The word 'allow' means some positive sanction or permission or sufferance. 'Allow' means according to Dictionary 'permit.' It implies some sort of volition, *i.e.* some gesture or movement of the mind, may be direct or indirect to indicate the mind of the subject. Mere acquiring of knowledge about erection of the pucca structure through information or otherwise is not allowing pucca building to be erected.' In the section we get 'has allowed pucca structure to be erected.' It clearly shows that the permission and hint to that effect must come before actual construction of pucca structure or at least during construction but before it is completed. Konwledge about the structure at the time of erection or after such constructioin or mere seeing of the structure cannot by itself be stated to be allowing such pucca structures to be erected. Some sort of encouragement from the

60. AIR 1967 Cal. 538.
61. AIR 1975 Cal. 194.

landlord must come before or at the time of erection of pucca structure by the tenant. Otherwise it cannot be said that the landlord allowed the tenant to erect pucca sturcture as contemplated in section 7(5) of the Act. "Allow" does not simply mean non-interference. It involves some kind of mental opereation helpful or conducive to some act, here 'erection of pucca structure during its operation or previous to such operation.' Whether the landlord has allowed pucca structure or not still depend on the facts and circumsntances in each case."

Elements necessary for ejectment of non-agricultural tenant :—

(1) When the tenant has used the land in a manner which renders it unfit for use for any of the purposes specified in section 4.

(2) Notice under section 75 is to be served.

(3) There must be a decree for ejectment under section 70.

(4) The right to ejectment must be exercised in respect of the entire holding.

8. Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies.—(1) Not-withstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding wuch land shall, on the expiration of the period so specified, be entitled to the renewal of such lease for prepetuity on such fair and reasonable rent as may be [determined under Chapter XIV of the *State Acquisition and Tenancy Act, 1950].[62]

Provided that no premium or *salami* shall be payable in respect of such renewal.

62. The words within square brackets were substituted for the words "agreed upon between the landlord and such tenant." by E.P. Ord. IX of 1967.

*The words "East Bengal" were omitted by P.O. 48 of 1972.

(2) Omitted.[63]

(3) A tenant holding non-agricultural land comprised in a tenancy to which the provisions of sub-section (1) apply shall not be ejected by his landlord from such land during the term specified in the lease, nor at any time after the tenant has exercised his right of renewal, except on the ground that he has used land in a manner which renders it unfit for use for any of the purpose specified in section 4.

(4) The interest of the tenant in any non-agricultural land held under a lease to which the provisions of sub-section (1) apply shall, during the term specified in the lease, or where the tenant has exercised his right of renewal, at any time tehreafter—

(*i*) in the case where such tenant dies intestate in respect of such interest, [be, subject to the provisions of section 91 of the *State Acquisition and Tenancy Act, 1950, transmitted][64] by inheritance in the same manner as his other immovable property :

Provided that in any case in which, under the law of inheritance to which such tenant is subject, his other porperty goes to the State his interest in such land shall be extinguished; and

(*ii*) subject to the provisions of this Act [and of section 90 of the *State Acquisition and Tenancy Act, 1950],[65] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

63. Sub-section (2) was omitted by E.P. Ord. IX of 1967. This sub-section (2) provides: "If there is any dispute as to whether the rent demanded or offered for the renewal of a lease under sub-section (1) is fair and reasonable, the landlord or the tenant may apply in the prescribed manner to the Court, and the Court shall thereupon determine the amount of rent for renewal of the lease which it considers fair and reasonable in the circumstances of the case."

64. The words, commas and figures were substituted for the words "be transmitted" by E.P. Ord. IX of 1967.

65. The words, figures and comma within square brackets were inserted after the words "this Act," *Ibid*.

*The words "East Bengal" were omitted by P.O. 48 of 1972.

Note :—Section 8 deals with tenancies under a lease in writing for a term of not less than 12 years as specified in the lese. Where any non-agricultural land is held under a lease in writing for such period, this section confers on the tenant on the expiry of such period the option of successive renewals of such lease on fair and reasonable rent as may be determined under Chapter XIV of the Sate Acquisition and Tenancy Act, 1950. The tenant is not required to pay any *salami* or premium for renewal of his lease.

Under sub-section (3) such a tenant cannot be ejected by his landlord either during the term provided by the lease or during its renewal except on the solitary ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4. Under sub-section (4) the interests of such a tenant are made heritable and capable of being transferred and bequeathed in the same manner and to the same extent as the other immovable property of the tenant subject to the provisions of section 90 of the State Acquisition and Tenancy Act, 1950.

9. Incidents of non-agricultural tenancies held for less than twelve years.—(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years—

(a) without a lease in writing, or

(b) under a lease in writing for a term of more than one year and less than twelve years to which the provisions of clause (5) of section 7 do not apply, or

(c) under a lease in writing but no term is specified in such lease,

then the tenant holding such non-agricultural land shall be liable to ejectment on one or more of the following grounds and not otherwise, namely :—

(i) on the ground that he has used such land in a manner which renders it unfit for use for any of purposes specified in section 4;

(ii) on the ground that the term of the lease has expired in the case of tenancies of the class specified in clause *(b)*.

(iii) on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause *(a)* :

Provided that a tenant shall not be liable to ejectment on the ground specified in clause *(iii)* except on payment of such reasonable compensation on account of the cost of removal of any structure erected or of any improvement effected on such land at the expense of the tenant or on other accounts not being the value of the land as may be [determined by the Deputy Commissioner in the perescribed manner].[66]

(2) The interest of the tenant in any non-agricultural land to which the provisions of sub-section (1) apply shall—

(i) in the case where such tenant dies intestate in respect of such interest, [be, subject to the provisions of section 91 of the *State Acquisition and Tenancy Act, 1950, transmitted][67] by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the State, his interest in such land shall be extinguished; and

(ii) subject to the provisions of this Act [and of the provisions of section 90 of the *State Acquisition and Tenancy Act, 1950,][68] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

66. The words within square brackets were substituted for the words "agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant" by E.P. Ord. IX of 1967.

67. The words, commas and figures within square brackets were substituted for the words 'be transmitted," *Ibid.*
*The words "East Bengal" were omitted by P.O. 48 of 1972.

68. These words were inserted after the words, "this Act" by E.P. Ord. IX of 1967.

Note:—Section 9 begins by excluding any other law or contract of lease from consideration and speaks in the opening part of land held for a term of more than one year but less than twelve years thereby distinguishing between tenancies on the basis of the length of possession. In those cases in which there is no written lease or in which no term is specified in the lease in writing, the opening portion must obviously mean that the land must be held, that is, occupied for more than one year.[69]

This section deals with three kinds of tenancies, namely, *(a)* tenancy held for a term of more than one year but less than twelve years without a lease in writing, *(b)* tenancy held for a term of more than one year but less than twelve years under a lease in writing, where the landlord has not allowed pucca structure to be erected, *(c)* tenancy held under a lease in writing but without any term specified in the lease.

Sub-section (1) provides that the tenant of any of these tenancies shall be liable to ejectment only on the ground mentioned in the section and not on any other ground. It then proceeds to state that a non-agricultural tenant coming under any of the three clauses *(a)*, *(b)*, *(c)* shall be liable to ejcetment on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy. It further provides that if the tenant is one who falls under clause *(a)* mentioned above, he will be liable to ejectment on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy. It further provides that if the tenant comes under clause *(b)* mentioned above, the tenant will also be liable to ejectment on the ground that the term of the lease has expired. The statue requires no notice to be served upon a tenant who holds non-agricultural land under clause *(b)*. As the statute does not require any notice, the lessor is under no obligation to serve a notice upon the lessee before instituting a suit for ejectment.[70]

69. *Indian Iron & Steel Co. Ltd., v. Biswanath Sonar,* AIR 1967 SC 77.
*The words "East Bengal" were omitted by P.O. 48 of 1972.
70. *Maya Chanda v. Mandadhari Sannamat,* (1959) 64 CWN 448.

It has been stated in the proviso that a tenant shall not be liable to ejectment on the ground specified in clause *(iii)* except on payment of such reasonable compensation on account of the cost of removal of any structure erected or of any improvement effected on such land at the expense of the tenant or on other accounts not being the value of the land as may be determined by the Deputy Commissioner in the prescribed manner. The proviso speaks of payment of reasonable compensation on account of the cost of remvoal of any structure erected by the tenant. But how the reasonable compensation may be assessed? The method of assessment has been laid down in the case of *Sk. Ajimalla v. Panchanan Roy.*[71] In this case the landlord got a decree for ejectment, but he was not agreeable to retain the structures. So, the tenant would have to remove them. A dispute, therefore, arose over the amount of compensation to be paid to the tenant in respect of the structures. It was held that the loss that the tenant would suffer on account of his having to leave the structures behind, may reasonably be taken to be equivalent to the monetary loss of the existing structure at the present market rate. On that footing, the reasonable compensation may be assessed as the present monetary value of the existing structures less the value of the materials, plus the cost of removal.

In the case of *Dip Narain Singh v. Kanai Lal Goswami,*[72] it was pointed out: "It is true that, technically speaking, until payment of compensation be made as required under section 9(1) *(iii)* of the Act, the plaintiffs would not be entitled to take advantage of their decree for ejectment, that is, for joint possession in the instant case, and until that time, the defendant cannot be srtictly regarded as a trespasser, and from that technical point of view, the plaintiffs' claim for mesne profits may not be sustainable. But after the purported determination of the defendant's tenancy, the defendent's position, if not of a trespasser, would be either of a tenant, possibly statutory, or of one in the permissive and suffered

71. (1955) 59 CWN 934.
72. (1959) 64 CWN 293.

occupation of the land in question. In this state of things, the plaintiffs would be entitled, at least to damages or compensation for use and occupation of the disputed land by the defendant during this period and obviously, from the point of view of justice and equity, which is certainly not contrary to any law in this behalf, the plaintiffs would be entitled to such compensation or damages, at least, at the rate of rent which was prevailing just before the purported determination of the defendant's tenancy by the notice to quit."

Under sub-section (2) the interest of the non-agricultural tenant are made heritable and capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

Now we may revert back to clause *(iii)* of sub-section(1) of this section to discuss the Rulings of the Court with regard to notice as required under this clause for determination of the tenancy. In the case of *Bengal River Service Ltd. v. Sree Murali Dhar Roy*,[73] it was held that where a non-agricultural land is held by a non-agricultural tenant as a monthly tenant, the provisions of section 106 of the Transfer of Property Act will apply and the tenant will be entitled to 15 days' notice for the purposes of a suit for ejectment.

But this decision was overruled by the Supreme Court of Pakistan in the case of *A.F.M. Kutubuddowla v. Hafez Muhammad Sadeq*.[74] The facts of the latter case in short were that the appellant was a monthly tenant occupying the land in suit for more than one year and less than twelve years. The appellant was holding the land wihtout a lease in writing. The notice of ejectment purporting to terminate his tenancy at the expiry of 15 days was properly served and received by the appellant, and the appellant was using the land not for manufacturing purposes but for running a workshop for repairs and servicing of motor cars and refrigerators on the land. The question that arose for decision was whether in the

73. (1955) 7 DLR 525.
74. (1959) 11 DLR (SC) 401 : PLD 1959 (SC) 446.

circumstances the appellant could claim protection under the Non-Agricultural Tenancy Act, 1949, from ejectment.

It was held by the learned Judge of the Supreme Court of Pakistan (Shahabuddin, Cornelius, Amiruddin Ahmad, J.J.) that section 166 of the Transfer of Property Act must be read as being subject to section 9(i) *(iii)* of the Non-Agricultural Tenancy Act, which gives the same right to a monthly tenant as to other tenants, although 'a year of the tenancy' in the case of a monthly tenant does not follow from the Transfer of Property Act. In order to give effect to section 9 for the purpose of a notice of ejectment, a notional year of tenancy is to be supposed commencing on the date of the inception of the tenancy under a landlord in question. Where the tenancy was a monthly tenancy of non-agricultural land held by the tenant for more than a year but less than twelve years, the lease not being in writing, six months' notice before ejectment was neoessary. A tenancy beginning on 1st of February, could be terminated by a six months' notice expiring with the end of next January. A 15 days' notice, being invalid, could not legally terminate the tenancy under section 9(i) *(iii)* of the Act of 1949.

Similarly, in the case of *Indian Iron & Steel Co. Ltd. v. Biswanath Sonar*,[75] the learned Judges of the Supreme Court of India held that section 9(1) *(iii)* of the West Bengal Non-Agricultural Tenancy Act applies also to a tenancy from month to month. For termination of the tenancy in such a case the term 'year' means a period of twelve months so that the tenant can only be made to quit at the expiry of the whole year, that is to say, on the anniversary of the commencement of the lease. In delivering the judgment of the Court Hidayatullah J, (afterwards C.J.) with whom Wanchoo and Shah J.J., concurred, observed : "In the matter of certain rights of the tenants, particularly in the matter of termination of their tenancy by notice it appears that this legislation intends to bring even a monthly tenant, who has

75. AIR 1967 SC 77; see also *Indian Iron & Steel Co. Ltd., v. Baker Ali*, AIR 1961 Cal. 515 : 64 CWN 641; *Shambhunath Pal v. Indian Iron & Steel Co. Ltd.*, (1974) 79 CWN 95 : AIR 1975 Cal.194.

occupied land for more than a year, within the protection of six months' notice before he is evicted. A different portection is given to a tenant who occupies land for twelve years and in that case he cannot be evicted even by notice unless he uses the land in a manner which renders it unfit for the purposes of the tenancy or his other property goes to Government and his interest in the land is extinguished."

It was argued that the words 'end of a year of tenancy' are inappropriate where the tenancy is from month to month becsue there is no year of tenancy, In reply Hidayatullah J., said: "Those words no doubt are indicative of tenancy from year to year but they are not such as to be altogether inapplicable to a tenancy from month to month. What the section contemplates is occupation for more than one year and it says that a tenant who has held the land for more than a year *albeit* on a tenancy from month to month, shall only be evicted on the anniversary of the day on which is tenancy commences. Where the tenancy is from month to month, 'year' means a period of 12 months and the tenant may only be required to quit at the expiry of the whole year, that is to say, on the anniversary of the commencement of the lease."[76]

In the case of *Kali Charan Mallik v. Hari Nath Chatterjee*,[77] it was held that where on the expiry of the period of lease (in this case a lease for three years) the tenant 'holds over,' a new tenancy is created and such case would be governed by section 9(1) *(b)* of the West Bengal Non-Agricultural Tenancy Act, 1949 (corresponding to S. 9(1) *(a)* of Act XXIII of 1949). No decree for ejectment can be passed in such a case in the absence of six months notice to quit.

In the case of *Mahadev Ram Kahar v. Tinkari Roy*,[78] the question was whether the defendant's tenancy by 'holding over' is 'without a lease in writing' within the meaning of secion 9(1) *(b)* of the West Bengal Non-Agricultural Tenancy Act, 1949 (corresponding to section 9(1) *(a)* of Act XXIII of 1949). In other words, the question is whether a tenancy of

76. *Indian Iron & Steel Co. Ltd. v. Biswanath Sonar*, AIR 1967 SC 77.
77. (1955) 60 CWN 1092.
78. AIR 1954 Cal. 539 : 58 CWN 651.

non-agricultural land by 'holding over' under section 116 of the Transfer of Property Act, arising out of the determination of a 'lease in writing'—the registered *Kabuliyat* for five years in the present case—constitutes holding of non-agricultural land 'without a lease in writing,' as contemplated by the said Act.

This was the tenant's second appeal arising out of suit for ejectment. The suit was dismissed by the trial Court on the ground that the defendant's tenancy is non-ejectable falling under section 7(5) of the Non-Agricultural Tenancy Act, 1949. On appeal that decision was reversed by the learned Subordinate Judge who held that the defendant cannot claim the advantage of section 7(5) of the Act. Being aggrieved by the decision of the learned Subordinate Judge, the tenant defendant preferred the second appeal and his principal contention was that he is protected under section 9(1) *(b) (iii)* of the Act (corresponding to section 9(1) *(a) (iii)* of Act XXIII of 1949). This contention was also raised before the learned Munsif but it was rejected.

The suit land has been found to be 'non-agricultural land' within the meaning of the Act and both parties have accepted that position. The defendant's tenancy started under a *kabuliyat*, dated 6-1-1929, corresponding to the 23rd Jaistha, 1336 B.S., which was for a period of ifve years, viz., 1336 B.S. to 1340 B.S. *i.e.* from 1st Baisakh 1336 B.S. to the end of Chaitra, 1340 B.S.

As the *kabuliyat* was before the amended section 107 of the Transfer of Property Act, it is not hit by the third paragraph of the said section. There was thus a valid lease between the parties for a period of five years expiring with the end of Chaitra 1340 B.S. and, as admittedly, there was payment and acceptance of rent and continuance of the tenant's possession after the determination of the said lease, there was 'holding over' under section 116 of the Transfer of Property Act and the defendant's tenancy was renewed from month to month under section 106 of the said Act.

The rent was accepted duly up to 1350 B.S. From 1351 B.S. the plaintiff refused to accept rent and in August, 1949

corresponding to the beginning of Baisakh 1356 B.S., he served on the tenant at 15 days' notice to quit purporting to terminate the tenancy with the expiry of the said Bengali month. On 19-9-49, the present suit was instituted. In defence the tenant claims portection under section 9(1) *(b) (iii)* of the West Bangal Non-Agricultural Tenancy Act, 1949 (corresponding to section 9(1) *(a) (iii)* of Act XXIII of 1949), there being admittedly no six months' notice expiring with the end of a year of the tenancy, as contemplated in the said clause *(iii)*.

It was held that the tenancy of non-agricultural land arising by 'holding over' by a teant on the determination of a registred lease, where the land has been held for a term of more than one year but less than twelve years, constitutes holding of non-agricultural land 'without a lease in writing' as contemplated by the Non-Agricultural Tenancy Act, 1949, so that 'six months' notice' as under section 9(1) (b) *(iii)* (corresponding to section 9(1) *(a) (iii)* of Act XXIII of 1949) is essential to the termination of the tenancy and 15 days' notice is insufficient for the purpose of founding a claim for ejectment by the landlord.

It was also held that the tenancy by 'holding over' is a new tenancy in law and the terms of the new tenancy may be the same as of the old or the determined or expired tenancy, and the tenant is holding over not under the 'expired' *kabuliyat* or registered lease or 'lease in writing' but really in spite of it. This is borne out by the language of section 116 of the Transfer of Property Act which speaks of 'renewal' of the lease.

In the case of *Maya Chanda v. Mandadhari Sannamat*,[79] a question was raised whether the teant's occupation after the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 came into force would amount to holding over under section 116 of the Transfer of Property Act and whether the tenancy is created in spite of the temporary bar on the landlord to eject the tenant. In this case the plaintiff filed a

79. (1959) 64 CWN 448.

suit for recovery of *khas* possession on the ground that the defendant's lease has expired by efflux of time and that thereafter the defendant has been continuing in possession without any lease in writing.

The plaintiff's claim is that the defendant was in occupation of the land in dispute under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 which placed a temporary bar upon the ejectment of non-agricultural tenants and that bar was removed on the 15th May, 1949 when the West Bengal Non-Agricultural Tenancy Act, 1949 came into operation and since the latter Act does not require a notice to be served, the defendant is liable to be ejected without service of a notice to quit.

The defendant contested the suit, *inter-alia*, on the ground that after the expiry of the registered lease executed in her favour by the Court of Wards she was holding over on payment of rent and as such had acquired a tenancy right without a lease in writing. Under section 9(1) *(b) (iii)* of the West Bengal Non-Agricultural Tenancy Act, 1949 (corresponding to section 9(1) *(a) (iii)* of Act XXIII of 1949) the defendant was not liable to ejectment except on the ground that her tenancy had been determined by the lessor by a six months' notice in writing expiring with the end of the year of the tenancy.

Both the Courts below dismissed the plaintiff's suit on the ground that the defendant is a non-agricultural tenant holding without a lease in writing and as such she is not liable to be ejected without a six months' notice as required by section 9 (1) *(iii)* of the Act. Against that decree the plaintiff filed an appeal before the High Court. The priamry point for consideratioin in this appeal was whether the case falls under section 9(1) *(a)* or section 9(1) *(b)* of the West Bengal Non-Agricultural Tenancy Act, 1949 (corresponding to section 9(1) *(b)* or section 9(1) *(a)* respectively of Act XXIII of 1949). If it falls under section 9(1) *(b)* (corresponding to section 9(1) *(a)* of Act XXIII of 1949) there is not doubt that under the provisions of sub-clause *(iii)* the lessor is not entitled to eject the lessee without service of a six months' notice ending with the year of the tenancy. If, on the other hand, the case is governed by

section 9(1) *(a)* (corresponding to section 9(1) *(b)* of Act XXIII of 1949) no notice is required to be served.

It was held that as the defendant had not acquired any right of tenancy by holding over under section 116 of the Transfer of Property Act, it follows that the defendant could not be said to have held the land for the required period without a lease in writing and the present case clearly comes under clause *(a)* of section 9(1) (corresponding to clause *(b)* of section 9(1) of the Non-Agricultural Tenancy Act). The statue requires no notice to be served upon a person who holds non-agricultural land under the first clause (corresponding to section 9(1) *(b)* of Act XXIII of 1949). As the statute does not require any notice, the lessor was under no obligation to serve a notice upon the respondent before instituting the suit for ejectment.

In the case of *Delbar v. Sarada Sundari*,[80] it was held that it is the settled law that the tenancy-at-will or a tenancy by holding over, terminates with the death of the tenant and there remains nothing for his heirs to be inherited nor his heirs can be considered as tenants holding over until and unless the landlord recognised them as tenants expressly or by implication. The principle is that there is no privity of contract between the lessor and the heirs of the lessee. If the heir continues to be in possession on the expiry of the lease, he cannot become a tenant by holding over and new tenancy must be created by the consent of both sides, otherwise the heirs are trespassers.

In the case of *Jagannath Upadhyay v. Amarendra Nath Banerjee*,[81] the question of validity and sufficiency of the notice to quit and of its service, *inter-alia*, were raised. This appeal was filed by the defendant and it arose out of a suit for ejectment and for recovery of arrears of rent and damages. According to the plaintiffs respondents, the defendant took settlement of the suit property under a lease which was evidenced by a *kabuliyat* dated 24-7-1937, corresponding to

80. (1960) 13 DLR 334 : PLD 1962 Dhaka 548 : PLR 1962 Dhaka 153.
81. AIR 1957 Cal. 479.

Sravan 8, 1344 B.S. The period of the lease, as given in the *kabuliyat*, was 7 years and the lease purported to run from *Sravan* 1344 B.S., expiring, therefore, with the end of Ashar, 1351 B.S. The defendant, however, continued in occupation and, as the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act of 1940 was in force from about May, 1940 right up to about the same month of 1949, when it was repealed and replaced and replaced by the permanent Act, the West Bengal Non-Agricultural Tenancy Act, 1949, the plaintiffs could not take steps for ejectment of the defendant.

The suit was instituted on 7-7-50, after service of a notice to quit, expiring with the month of Chaitra 1356 B.S. The notice appears to have been served on 15-10-49 corresponding to 28th Aswin 1356 B.S. The suit was decreed by the trial Court but the decree for ejectment was made subject to payment of compensation by the plaintiffs to the defendant under the proviso to clause *(iii)* of section 9(1) of the Act. The lower Appelate Court affirmed the trial Court's decision. On second appeal the decree of the lower Appellate Court was maintained.

The propriety of this decision was challenged in the Letters Patent appeal. But the appeal was dismissed. It was held that the case comes under section 9(1) *(b)* (corresponding to section 9(1) (a) of the Non-Agricultural Tenancy Act, 1949) as the defendant (tenant) was at the most holding over at the relevant time and thus holding the land without a lease in writing. It was further held that the date of commencement of the tenancy in suit was the beginning of the Bengali month of Sravan so that, the tenancy being according to the Bengali calendar, its months would correspond to the months of the Bengali calendar. The tenancy in suit being from month to month according to the Bengali calendar, the notice to quit was valid and sufficient. Section 110 of the Transfer of Property Act, even if it applies to the present case, would not affect the position or make any difference.

The real test as to the creation of new tenancy after the determination of lease by holding over is whether rent is tendered as rent by the tenant in possession after termination

or expiry of tenancy, and not as statutory tenant in discharge of his obligations, and is accepted by the landlord as such rent, and if so a fresh tenancy by holding over is thereby created unless there is prohibition against the exercise of jurisdiction by Court regarding landlord's right to possession.[82]

In the case of *Chandra Nath Mukherjee v. Chulaipashi*,[83] the defendants 2 and 3 executed a registered *kabuliyat* in favour of the plaintiff purporting to take a lease of a plot of land for an indefinite period at a certain yearly rental for the purpose of erecting a dwelling house thereon. The *kabuliyat* contained a condition that if the lease-hold right was transferred, the lease would be considered as determined and the plaintiff landlord would be entitled to take *khas* possession without any notice. The defendants entered into possession, erected a dwelling house thereon and lived therein for 7 or 8 years after paying the yearly rental. They then sold their lease-hold right in favour of defendant No. 1 and left the place. The plaintiff never received any rent from defendant No.1 and treated him as a trespasser. The plaintiff filed a suit for possession and mesne profits from the defendants within twelve years from the date of execution of the *kabuliyat*. It was held that as the suit was not disposed of before the West Bengal Non-Agricultural Tenancy Act came into force, and the defendants were non-agricultural tenants within the meaning of that Act, by virtue of section 88 read with section 9 six months' notice was essential to determine the tenancy and without such notice no decree for ejectment could be passed in plaintiff's favour.

Where a notice dated Jaistha 31, 1359 B.S., calling upon the lessee to deliver possession immediately with the end of the year of the tenancy (which ends on Falgoon 2, following) is in excess of six months expiring with the end of the year of the tenancy, it was held that it is a good notice under section 9(1) *(b) (iii)* of the West Bengal Non-Agricultural Tenancy Act, 1949

82. *Munshi Hossain Baksh v. Khudiram Mukherjee*, (1971) 75 CWN 421.
83. AIR 1960 Cal. 40.

(corresponding to section 9(1) *(a) (iii)* of the Non-Agricultural Act, 1949).[84]

In the case of *Hafez Muhammad Sadiq v. A.F. M. Kutubuddowla*,[85] the point for consideration was whether the landlord is entitled to get rent for the period of occupation of the land by the tenant after he was served with notice to vacate the premises. It was held that a suit for ejectment of the defendant who is governed by the provisions of the Non-Agricultural Tenancy Act could be maintained provided a valid notice was served under the provisions of the said Act.

From this it does not follow (after the decision of the Supreme Court) that the plaintiff is debarred from claiming any rent from the defendant. The decision of the Supreme Court celarly shows that the plaintiff could file a suit for ejectment provided he complied with the provisions of section 9(c) *(iii)* of the Non-Agricultural Tenancy Act. The defendant is bound by the terms under which he is in occupation of the lane and must pay rent and he cannot avoid payment of rent so long as his lease subsists. It cannot be said that the defendant being held to be a non-agricultural tenant is not liable to be evicted and that the case is attracted by the provisions of the State Acquisition and Tenancy Act.

As regards the word 'term' as used in section 9(1) a question was raised whether it indicates a period of occupation or a period agreed upon in a contract. After analysing the provisions of the Act and considering what is the true meaning of the two expressions in section 9, Hidayatullah J. (afterwards C.J.) observed: "A close study of the Act shows that the word "term" is used in both senses and the context must determine in which sense it is to be understood."[86]

Difference between sections 7, 8 and 9 :—(1) Sections 7 and 8 deal with tenancies for a period not less than twelve years, whereas section 9 deals with tenancies for more than one year but less than twelve years.

84. *Benode Behari Mukherji v. Sk. Motaleb Ali* (1962) 69 CWN 1076.
85. (1966) 19 DLR 672.
86. *Indian Iron & Steel Co. Ltd. v. Biswanath Sonar*, AIR 1967 SC 77.

(2) The difference between sections 7 and 8 on the one hand and section 9 on the other lies in the kind of protection afforded. Under sections 7 and 8 a tenant who has held the land under lease for more than 12 years cannot be ejected at all unless he has used such land in a manner which renders it unfit for use for the purposes of the tenancy and his interest becomes heritable, transferable and divisible like any other immovable property. Under section 9 a tenant who has held a land in occupation for less than 12 years, but more than one year, can only be ejected by a notice of six months expiring with the end of the year of the tenancy.[86]

(3) It is to be noticed that one ground of ejectment is common to all the three sections, namely, the ground that the tenant has used the land in a manner which renders it unfit for use for the purposes of the tenancy. But in section 9 one additional ground of ejectment is provided for tenancies mentioned in clause *(a)* of the section, *i.e.*, the tenant can only be ejected by a notice of six months expiring with the end of the year of the tenancy and a different additional ground of ejectment is porvided for the tenancies falling within clause *(b)* of the section *i.e.* the ground that the term of the lease has expired.[87]

9A. Computation of the period of possession.—In computing under this Chapter the period for which any non-agricultural land has been held by a tenant, he shall be entitled to tack to the length of his possession any periods during which his predecessors-in-interest were in possession of the land, provided that there is no break between the periods to be tacked.

10. Special provision applicable to tenancies for specific religious purposes.—Notwithstanding anything else where contained in this Act or in any other law for the time being in force or in any contract, if the non-agricultural land comprised in any tenancy is held specifically for any religious

87. *Astaram Bagdi v. Sitanath Mondal.* (1955) 60 CWN 109.

purpose for any period under a lease in writing in which such purpose is specified, then such tenancy shall be deemed to be a tenancy of the class specified in section 7 :

Provided that the tenant holding such land shall not be ejected by his landlord from such land except on the ground that he has used such land for any purpose other than the said religious purpose or has not used the land for the said religious purpose for more than three years.

11—15 (Omitted) [88]

88. Section 11-15 were omitted by E.P. Ord. IX of 1967. These sections provide as follows :—

11. Enhancement of rent.—(1) The rent payable by a tenant in respect of any non-agricultural land shall excep in the case where such land is held on a fixed rent or free of rent either under a contract or under a decree or order passed by a competent Court or authority, be liable to enhancement as provided by this Act and not otherwise.

(2) The rent payable by a tenant may be enhanced up to such limit as the Court thinks fair and equitable in the circumstances of the case:

Provided that the rent shall not be enhanced as to exceed the rent previously payable by the tenant by more than twelve and a half *per* centum.

(3) In determining a fair and equitable rent under sub-section (2) the Court shall, subject to such further provisions as may be prescribed in this behalf, take into consideration—

(a) the existing rent and the period during which it has remained without enhancement;

(b) as far as can expediently be ascertained, the rent paid to other landlords for non-agricultural lands in the vicinity with similar advantages or of a similar description;

(c) the market value of the non-agricultural lands determined by taking the average market value of five years preceding and the rent which would be payable if the rate were fixed at not more than two *per centum* of such market value;

(d) the special conditions and incidents, if any, of the tenancy; and

(e) any cost incurred in making any improvement to or on the non-agricultural land or in converting such land for the purpose for which it is being used according to the conditions of the tenancy.

12. Provision as to enhancement on ground of landlord's improvement.—

(1) When an enhancement is claimed on the ground of landlord's improvement,—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with the provisions of this Act; and

(b) in determining the amount of enhancement the Court shall have regard to,—

(i) the increase in the value of the non-agricultural land caused or likely to be caused by the improvement.

(ii) the cost of the improvement,

(iii) the expenditure (if any), required for utilising the improvement, and

(iv) the existing rent and the ability of the non-agricultural land to bear a higher rent.

(2) A decree under this section, shall, on the application of the tenant, be subject to reconsideration in the event of the improvement not producing or causing to produce the estimated effect.

13. Powers to order progressive enhancement.—If in thinks that an immediate increase of rent will cause hardship, the Court may direct that the enhancement shall take effect gradually at such intervals and by such increments extending over a period not exceeding five years as the Court may fix in this behalf.

14. Limitation of right of enhancement.—(1) When a tenant is admitted to the occupation of any non-agricultural land, the rent payable by such tenant in respect of such land shall not, except on the ground of landlord's improvement, be enhanced during the fifteen years next following the date on which the tenant has been so admitted to the occupation of such land.

(2) When the rent of a tenant has been enhanced by the Court or pursuance of the conditions of a contract, it shall not be further enhanced during the fifteen years next following the date on which it has been last so enhanced and for the purposes of this section if an order of gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 13, the full rent fixed by such order shall be deemed to have come into effect from the date of such order;

Provided that the landlord of such tenant may institute a suit for the enhancement of the rent of such tenancy during the said period of fifteen years on the ground of any improvement effected to the non-agricultural land comprised in such tenancy by, or wholly or partly at the expense of, such landlord during such period.

15. Reduction of rent.— The rent of a teant may be reduced by the Court if the Court considers that the rate of rent payable by such tenant is unfair and inequitable, and in determining what rent is fair and equitable under this section the Court shall have regard to the provisions of sub-section (3) of section 110.

CHAPTER -IV

Under-tenants

16. Application of Chapter— The provisions of this Chapter shall apply to all under-tenants whether their tenancies were created before or after the commencement of this Act.

17—19 (Omitted).[1]

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1. Sections 17, 18 and 19 were omitted by E.P. Ord. IX of 1967. These sections provide as follows :—

"**17. Terms on which an under-tenant may be admitted to occupation of non-agricultural land.**— An under-tenant may be admitted to the occupation of any non-agricultural land on such terms and conditions consistent with the providions of this Act as may be agreed on between himself and his landlord;"

"**18. Rate of rent payable by an under-tenant.**— An under-tenant shall be liable to pay such rate of rent for the non-agricultural land comprised in his tenancy as has been agreed on between himself and his landlord at the time of his admission to the occupation of such land :

Provided that the rate of rent payable in respect of the non-agricultural land comprised in any tenancy by an under-tenant who has been admitted to occupation of such land after the commencement of this Act shall not, except in the case where such land is held on a fixed rent or free of rent by the tenant under whom such under-tenant holds, exceed one and a half times the rate of rent payable by such tenant in respect of such land."

"**19. Enhancement of rent.**—(1) Notwithstanding anything in any other law for the time being in force or in any contract, the rent of an under-tenant shall be liable to enhancement up to a limit not exceeding one and a half times the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of such under-tenant by the tenant under whom such under-tenant holds in the case where such tenant does not hold such land at a fixed rent or free of rent, and up to such limit as the Court may, subject to such provisions as may be prescribed in the behalf, think fair and equitable in other cases.

(2) For the purpose of sub-section (1) the rent for the time being payable in rspect of the non-agricultural land comprised in the tenancy of an under-tenant by the tenant under whom such under-tenant holds shall, in the case where such under-tenant has been admited to the occupation of only a portion of the land comprised in the tenancy' of such tenant, be determined in such manner as may be prescribed."

20. Ejectment of an under-tenant.—Notwithstanding anything contained in any other law for the time being in force or in any contract, an under-tenant shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

(a) On the ground that he has used the non-agricultural land comprised in his tenancy in a manner which renders it unfit for use for any of the purposes specified in section 4;

(b) on the ground that the term of his lease has expired when he holds the non-agricultural land under a written lese :

Provided that in the case where any non-agricultural land is held by an under-tenant wihtout a lease in writing or under a lease in writing but no term is specified in such lease, it shall be also lawful for his landlord to eject him from such land after having given him six months' notice in writing expiring with the end of a year of the tenancy, and on payment of such reasonable compensation as may be [determined by the Deputy Commissioner in the prescribed manner.][1]

21. Other incidents of tenancies of under-tenants.—The interest of an under-tenant in any non-agricultural land shall,—

(a) in the case where such under-tenant dies intestate in respect of such interest, [be, subject to the provisions of section 91 of the *State Acquisition and Tenancy Act, 1950, transmitted][2] by inheritance in the same manner as his other immovable property :

1. The words within square brackets were substituted for the words "agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant" by E.P. Ord. IX of 1967.
2. The words, commas, and figures within square brackets were substituted for the words "be transmitted," *ibid.*

*The words "East Bengal" were omitted by p.O, 48 of 1972.

Provided that in any case in which under the law of inheritance to which such under-tenants is subject his other property goes to the State, his interest in such land shall be extinguished; and

(b) subject to the provisions of this Act [and of the provisions of section 90 of the* State Acquisition and Tenancy Act, 1950],[3] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

22. Special incidents of a permanent tenancy of an under-tenant.—Notwithstanding anyting contained in any other law for the time being in force or in any contract, where the conditions referred to in clauses (1), (2), (3), (4) or (5) of section 7 or section 10 are fulfilled in relation to the tenancy of an under tenant or where any non-agricultural land is held by an under-tenant under a lease in writing for a term of not less than twelve years specified in such lease, such under-tenant shall have as regards his immediate landlord all the rights and liabilities of a tenant as set forth in section 7, section 8 or section 10, as the case may be, and the provisions of [section][4] shall apply, and the provisions of [section 20] [5] in so far as they are inconsistent with the provisions of this section, shall not apply, to such under-tenant.

Note :—Section 22 confers certain privileges of tenants on a class of under-tenants of not less than 12 years standing or having other attributes. By virtue of the provisions of this section where an under tenant holds any non-agricultural land under a lease in writing for a term of not less than 12 years or under the conditions as specified in sub-section (1) to (5) of section 7, he shall have all the rights and liabilities of a

3. These words were inserted after the words "this Act", ibid.
4. The word and figure within square brackets were substiuted for the words and figures "sections 6 and 11 to 15" by E.P. Ord. IX of 1967.
5. The word and figure within square brackets were substituted for the words and figures "sections 18, 19 and 20," *ibid.*

*The words "East Bengal" were omitted by P.O. 48 of 1972.

tenant as set-forth in section 7 or section 8. Further, he then elevates himself to be a tenant governed by section 6.

In a Calcutta case,[6] a question was raised whether protection under section 7 read with section 6 can be extended to an under-tenant holding *bemeadi* lease. It was held that inasmuch as a *bemeadi* lease does not come within section 22 of the Act, the under-tenant holding a *bemeadi* lease is not entitled to the protection which a tenant may ordinarily get under the Non-Agricultural Tenancy Act. Hence the protection given under section 7 read with section 6 of the Act, cannot be extended to an under-tenant, holding a *bemeadi* lease. A *bemeadi* lease means a lease which is not for a fixed period and as such, it has the ordinary incidence of a lease for a tenancy at will between the landlord and the tenant.

6. *Sarat Chandra v. Satish Chandra*, (1954) 59 CWN 434 : 8 DLR 18.

CHAPTR –V

Provisions as to transfer of non-agricultural land

23. Manner of transfer of non-agricultural land and notices to landlords.—(1) Every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share there of shall, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, be made by registered instrument, and a Registering Officer shall not accept for registration any such instrument unless the sale price or, where there is no sale price, value of the land or portion or share thereof transferred is stated therein, and unless it is accompanied by—

(*a*) a notice giving the particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord who is not a party to the transfer, and

(*b*) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such land or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount, as, that referred to in clause (*a*) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such land or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such land or portion or share thereof until the purchaser or the mortgagee, as the case may be, files a notice similar to and deposits a process fee of the same amounts as that referred to in sub-section (1).

(4) If the transfer of a portion or share of such land be one to which the provisions of section 24 apply there shall be filed notices giving particulars of the transfer in the prescribed

form together with process fees prescribed for the service thereof on all co-sharer tenants of such land who are not parties to the transfer.

[(5) The Court, Revenue-officer of Registering Officer, as the case may be shall serve, in the prescribed manner, the notices referred to in the preceding sub-section :

Provided that the service of such a notice shall not operate as an admission of the amount of rent or the area of such land by the landlord or by any co-sharer tenant of such land on whom such notice is served or be deemed to constitute an express consent of the landlord or such co-sharer tenant to the divison of the tenancy or to the distribution of the rent payable in respect thereof :

Provided further that, if a transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceedings to which the landlord was not a party, the authority before whom the appropriate suit or proceedings was first initiated shall transmit a copy of such order to the landlord.][7]

Note :—Under section 23 the transfer of non-agricultural land is compulsorily registerable irrespective of the value of such land. Under sub-section (1) every transfer of non-agricultural land or of any protion or share thereof shall be made by a registered instrument except in the case of a bequest or a sale in execution of decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913. The words 'every transfer' include a gift under the Muslim Law. The word 'transfer' in this section does not include partition or until a

7. Sub-section (5) was substituted for the original sub-section by E.P. Ord. IX of 1967. The original sub-section (5) runs :—
"(5) The Court, Revenue-officer or Registering-Officer as the case may be, shall in the prescribed manner serve the notices for which this section provides and after service of such notice the landlord shall not refuse to recognise the transferee as the tenant in respect of the land portion or share thereof transferred not omit to enter the name of the transferee in the rent-roll of the landlord in place of that of the transferor or, where only a portion or share of the interest of the transferor has been transferred, along with the name of the transferor."

decree or order absolute for forclosure is made, simple or usufructuary mortgage or mortgage by conditional sale.[8]

The Registering Officer is not to accept for registration any such instrument unless the sale price, or where there is no sale price, its value is stated therein and unless it is accompanied by a notice of such transfer on the landlord who is not a party to the transfer. By virtue of the provisions of this section an instrument of transfer of non-agrcultural land or a portion or share thereof must contain the sale price in the case of a sale and of the value in case of an exchange, or a partition or a gift or bequest of such land. It should also be accompained by the prescribed notice and process fee. The sale-price in this section means the actual price and the value of the land means the market value of the land. The provisions of this section are mandatory. So if the Registering Officer accepts and registers an instrument of transfer of non-agricultural land or a portion or share thereof in disregard of the provisions of this section, the registration will be invalid and the transfer inoperative. But in that case section 53A of the Transfer of Property Act, 1882 is applicable.[9]

The transferee in possession under an un-registered *kabala* may, therefore, protect his possession as against his vendor and no question of limitation arises thereunder, since there is no bar of limitation to a defence.[10]

When an instrument of transfer of a non-agricultural land or a portion or share thereof is presented for registration before a Registering Officer, it is incumbent on him to go through the instrument and to see firstly, whether it contains the sale price or the value of the property transferred; and secondly, whether the instrument is accompained by notice containing the particulars of the transfer in the prescribed form for service on the landlord who is not a party to the transfer. In case of transfer of a portion or share of such land it is necessary to serve the notice, upon all the co-sharer

8. Non-Agricultural Tenancy Act, 1949, S. 26(2) (a).
9. *Nakul v. Kalipada*, (1938) 42 CWN 630.
10. *Nakul v. Kalipada*, (1938) 42 CWN 630 at p. 634.

tenants of the tenancy who are not parties to the transfer. The object of serving notice to the co-sharer tenants is to give them an opportunity to exercise the right of pre-emption under section 24.

Sub-section (2) enacts that in the case of a testamentary bequest of a non-agricultural land or a portion or share thereof, no Court shall grant the probate or letters of administration until the applicant files similar notice in the prescribed form giving particulars of the bequest together with the prescribed process fee for transmission to the landlord.

Sub-section (3) provides that the sale of a non-agricultural land or a portion or share thereof in execution of a decree or certificate shall not be confirmed by the Court or the Revenue Officer until the purchaser files similar notice and deposits the process fee as that referred to in sub-section (1). Similarly no Court shall make a decree or order absolute for foreclosure of a mortgage of such land or a portion or share thereof, until these conditions are fulfilled by the purchaser or the mortgagee, as the case may be. In the absence of notice and process fee a sale confirmed or a decree or order made absolute for foreclosure by the Court, is not, however, a nullity. The Court or the Revenue Officer may simply cancel the confirmation of sale or the decree or order made absolute for foreclosure for such an irregularity.

Sub-section (4) provides that in case of transfer of a portion or share of any non-agricultural land, the notice giving particulars of the transfer together with the process fee is to be filed for service upon all the co-sharer tenants of such land who are not parties to the transfer. Sub-section (5) requires the Court, the Revenue Authority or Registering Officer, as the case may be, to serve the notice to the landlord and the co-sharer tenants in the prescribed manner.

The first proviso to sub-section (5) contemplates that the service of the notice shall not operate either as an admission of the amount of rent or the area of such land by the landlord or by any co-sharer tenant on whom the notice is served. It will not also be deemed to be an express consent of the landlord or the co-sharer tenant to the division of the tenancy or to the distribution of rent payable in respect thereof.

The second proviso to sub-section (5) makes provision for alteration or correction of the rent roll in case the transfer is subsequently set aside or modified. It sfates that if the transfer is subsequently set aside or modified by a compentent authority in any suit, appeal or other proceedings to which the landlord was not a party, the authority concerned shall transmit a copy of such order to the landlord.

24. Power of the co-sharer to purchase.—[(1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the Court for such portion or share to be transferred to himself or to themselves, as the case may be.][11]

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount of the consideration money or the value of [the portion or share of the property][12] transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and

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11. Sub-section (1) of Section 24 was substituted by E.P. Ord. IX of 1967. The original sub-section (1) provides as folows :—
"(1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land, or if the non-agricultural land held by non-agricultural tenant or a portion or share thereof is transferred, the immediate landlord of such non-agricultural tenant may within four months of the service of notice issued under section 23 and in case no notice had been issued or served then within four months from the date of knowledge of such transfer, apply to the Court for such portion or share or for such land or portion or share, to be transferred to himself or to themselves, as the case may be :

to state what other sums he has paid in respect of rent for the period after the date of transfer or in annulling encumbrances on the property and also that other amounts, if any, have been spent by him, between the date of the transfer and the date of service of the notice of the application, in erecting any building or structure or in making any other improvement in [the portion or share of the property][12] transferred. The Court shall then direct the applicant including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid or spent on these accounts together with interest at the rate of six and a quarter *per centum per annum* with effect from the date on which the transferee made such payments or spent such amounts:

Provided that if the correctness of any amount claimed to have been paid or spent by the transferee on any such account is disputed by any applicant the Court shall enquire into such dispute and, after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by the transferee on any such account and shall then direct the applicant to deposit the amount so determined with interest at the rate of six and quarter *per centum per annum* as aforesaid within such period as the Court thinks reasonable.

Provided that—

(a) if both the co-sharer tenant and the landlord apply under this section and comply with the provisions herein contained the co-sharer tenant shall have the prior right to purchase under this section;

(b) the immediate landlord of the non-agricutural tenant shall not have any right to purchase under this section unless the non-agricultural land or the share or portion thereof so transferred is contiguous to any land in the actual possession of the landlord and the court is satisfied that such land or share or portion thereof is required for use by such landlord for any of the purposes specified in section 4; and

(c) in the case of a transfer in execution of a decree or certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section."

12. The words within square brackets were substituted for the words "the property or the portion or share thereof", *ibid.*

(4) *(a)* When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the service of notice of the application, whichever is later, apply to join in the said application, and any co-sharer tenant who has not applied under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum, as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).

(c) If such deposit is made, the Court shall grant the application to join and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) If the deposits required under sub-section (2) or clause *(b)* of sub-section (4), as the case may be, and under sub-section (3) are made [* * * *][13] the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit.

[* * * * * * *][14]

(6) Notwithstanding anything contained in any other law for the time being in force the Court shall, if the applicant

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13. The words, commas, brackets and figures "and, in the case where the application is made by the immediate landlord, the Court is satisfied that the conditions referred to in sub-section (1) have been fulfilled" were omitted by E.P. Ord. IX of 1967.

14. The full stop was substituted for the colon at the end of sub-section (5) and thereafter the proviso was omitted, *ibid.* The proviso runs thus:- "Provided that if both the immediate landlord and the co-sharer tenant have applied under this section and the application of the co-sharer tenant is allowed under this sub-section, the application of the immediate landlord shall be dismissed."

under sub-section (1) or any person whose application under sub-section (4) is granted disputes the correctness of the amount of the consideration money as stated in the notice issued under section 23, inquire into such dispute before making an order under sub-section (5) and after giving the transferee an opportunity of being heard determine for the purposes of this section the amount of the consideration money which the transferee has actually paid for the transfer of [the portion or share of the property][15] and the amount so determined shall be deemed to be the consideration money referred to in sub-section (2) and where the amount of the consideration money has been so determined the deposit made under that sub-section shall for the purposes of sub-section (5) be the amount so determined togehter with the compensation at the rate of five *per centum* of such amount.

(7) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant and, in this case, may require the applicant who makes such reques to deposit, within such period as the Court may fix, such further sums as the Court considers necessary for equitable distribution among the remaining applicants :

Provided that no apportionment order under this sub-section shall operate as a division of the tenancy.

(8) From the date of making of the order under sub-section (5)—

[(i) the right, title and interest in the share or portion of the non-agricultural land accruing to the transferee from the transfer shall, subject to any order passed under sub-section (7), vest free from all encumbrances,

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15. The words within square brackets were substitued for the words "the property or the portion or the share thereof, as the case may be," by E.P. Ord. IX of 1967.

which have been created after the date or transfer, in the co-sharer tenant whose application to purchase has been allowed under sub-section (5)][16],

(ii) the liability of the transferee for the rent due from him on account of the transfer shall cease, and

(iii) the Court, on further application of such applicant, may place him in possession of the property vested in him.

(9) An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals.

(10) Noting in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(11) Nothing in the section shall apply to—

(a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or

(b) a transfer by exchange, [****][17] or partition, or

(c) a transfer by bequest or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or

(d) a *wakf* in accordance with the provisions of the Muhammadan Law, or,

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16. Clause (i) was substituted for the former clause (i), by E.P. Ord. No. IX of 1967. The original clause (i) runs thus :-
"(i) the right, title and interest in the non-agricultural land or portion or share thereof accruing to the transferee from the transfer shall, subject to any orders passed under sub-section (7), be deemed to have vested free from all encumbrances which have been annulled or created after the date of transfer, in the immediate landlord or in the co-sharer tenant, as the case may be, whose apQuestionplication to purchase has been allowed under this section."

17. The word "sub-lease" was omitted by E.P. Ord. IX of 1967.

(e) a *debuttor* or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

***Explanation.*—**A relation by consanguinity shall, for the purposes of this sub-section, include a son adopted under the Hindu Law.

Note :— Section 24 deals with pre-emption in respect of non-agricultural land. Pre-emption in respect of such land can be claimed only under the provisions of section 24 of the Non-Agricultural Tenacny Act , 1949 and not under section 96 of the State Acquisition and Tenancy Act, 1950.[18] In the case of *Forman Ali Howladar v. Helaluddin Bepari*,[19] it was argued that sub-sections (2) and (3) of section 81 of the State Acquisition and Tenancy Act, 1950 have repealed section 24 of the Non-Agricultural Tenancy Act, 1949. But this contention was overruled by the Court. It was held that it cannot be said that sub-section (2) and (3) of section 81 of the said Act have repaled section 24 of the Non-Agricultural Tenancy Act by implication. The repeal of one enactment by another by implication may be inferred when the two enactments are so inconsistent with, and contradictory to, one another that they cannot stand together and cannot be operative simultaneously. In such a case alone it may be taken that the subsequent enactment has repealed the earlier one by implication.

The object of section 24 of the Act is to prevent non-agricultural lands from being possessed by stranger purchasers if the other co-sharer tenants desire to have the same themselves.[20]

Under the original sub-section (I) the right of pre-emption was allowed to the immediate landlord of a non-agricultural

18. *Forman Ali Howladar v. Helaluddin Bepari*, (1965) 20 DLR 1197; *Abdul Khaleque v. Jadav Chandra Mali*, (1968) 20 DLR 562 : PLD 1970 Dhaka 10; *Mst. Lutfun Nahar v. Syeeda Hashmat Ara*, (1969) 21 DLR 633 : PLD 1969 Dhaka 979.
19. (1965) 20 DLR 1197 : PLD 1970 Dhaka 10.
20. *Shyamapada Bhattacharjee v. Satay Gopal Majumder*, (1963) 67 CWN 599.

tenancy. But this right was taken away from him by the East Pakistan Ordinance No.IX of 1967.

The new sub-section (I) enacts that if a portion or share of any non-agricultural land is transferred, a co-sharer tenant of such land may apply for transfer of that portion or share of such land to him. The co-sharer tenant must apply within four months of the service of notice issued under section 23 of the Act and in case no notice has been issued or served he may apply within four months of the date of the knowledge of the transfer.[21] In the latter case he cannot be allowed to exercise the right of pre-emption beyond three years from the date of sale.

In a Calcutta case[22] a question was raised as to the period of limitation for filing an application under section 24 when no notice was served under section 23 of the Act. Following the decision of the speical Bench in *Asmat Ali's case*,[23] it was held that where not notice under section 23 of the Act has been served upon the applicant for pre-emption, the period of limitation for filing the pre-emption application is three years from the date of sale under Article 181 of the Limitation Act and not four months as provided in section 24 of the Act.

The period of limitation for filing an application for pre-emption under this section is the same as provided in section 96 of the State Acquisition & Tenancy Act, 1950. The burden of proof of the date of knowledge lies on the petitioner.[24] In the language of Murshed C.J.: "It is incumbent upon the petitioner to show that he is still within the period of limitation, namely, four months from the date of the actual

21. Non-Agricultural Tenancy Act, 1949, S. 24(1); *Abdul Maleque Lashkar v. Tayabunnessa*, (1964) 18 DLR 618 : PLD 1966 Dhaka 217 : PLR 1964 Dhaka 1190; *Syed Ali v. Abdul Khaleque*, (1969) 21 DLR 463.
22. *Hari Charan Kar v. Abhoy Charan Dey* (1955) 59 CWN 849 : 8 DLR 22.
23. (1947) 52 CWN 64.
24. *Abdul Maleque Lashkar v. Teyabunnessa*, (1964) 18 DLR 618 ; *Farok Ahmed v. Abdul Jalil*, PLD 1969 Dhaka 390; *Mst. Lutfun Nahar v. Syeeda Hasmat Ara*, (1969) 21 DLR 633 : PLD 1969 Dhaka 979.

knowledge of the transaction.[25] If he does not come to the Court within this period his application will be dismissed.[26]

Under the Non-Agricultural Tenancy Act, 1949, a contiguous owner cannot claim a right of pre-emption.[27]

The right of pre-emption conferred by section 24 is confined to the co-sharers in the tenancy.[28] In this regard Murshed. J. observed : "Sharing the tenancy itself in relation to the land is the crucial test upon which the right of pre-emption is dependent."[29] The right of pre-emption vests in a tenant of non-agricultural land under section 24(1) of the Act[30] and the Act allows pre-emption not to a co-sharer of a land but to a co-sharer tenant.[31]

The right of pre-emption is not an indefeasible right. If during the pendency of the proceeding the pre-emptor ceases to be a co-sharer the right is lost[32] . In order to maintain a claim for pre-emption, the pre-emptor should have an interest in the holding[33] as a co-sharer tenant not only at the time of filing of the application for pre-emption but also

25. *Abdul Maleque Lashkar v. Tayabunnessa*, (1964) 18 DLR 618 at P.623.
26. *Huzzat Ali v. Imamuddin*, (1960) 13 DLR 819; *Binodini Dasi v. Motilal Sikder*, (1969) 21 DLR 262.
27. *Abdul Khaleque v. Jadav Chandra Mali*, (1968) 20 DLR 562 : PLD 1970 Dhaka 10 : *Forman Ali Howladar v. Helaluddin Bepari*, (1965) 20 DLR 1197; *Mst. Lutfun Nahar v. Syeeda Hasmat Ara*, (1969) 21 DLR 633 : PLD 1969 Dhaka 979.
28. *Manindra Chandra Ghosh v. Majibul Islam*, (1960) 12 DLR 785 : PLD 1961 Dhaka 356.
29. *Brindaban Chandra Chowdhury v. Mst. Rezia Begum*, (1963) 16 DLR 77 at p. 89 : PLR 1963 Dhaka 1051.
30. *Haji Akhtaruzzaman v. Jadunath Pal*, (1965) 17 DLR 384 at p. 389 : PLD 1967 Dhaka 546 : PLR 1966 Dhaka 213 F.B.
31. *Abdul Karim v. Harendra Chandra Dhupi*, PLD 1963 Dhaka 939 : 14 DLR 847; *Haji Wahab Ali v. Kadam Ali*, PLD 1963 Dhaka 364.
32. *Mamijannessa v. Tazaruddin*, (1961) 14 DLR 572.
33. The word "land" in section 24 of the Non-Agricultural Tenancy Act, 1949 has been used in the same sense as "holding" has been used in section 26F of the Bengal Tenancy Act (*Brindaban Chandra Chowdhury v. Mst. Rezia Begum*, (1963) 16 DLR 77 : PLR 1963 Dhaka 1051; *Manindra Chandra Ghosh v. Majibul Islam*, (1960) 12 DLR 785 : PLD 1961 Dhaka 356.)

throughtout the proceeding.[34] Similary in the case of *Chandra Kumar v. Abdul Motaleb*,[35] learned Judges of the Supreme Court of Pakistan (Cornelius C.J., Hamoodur Rahman and Yakub Ali J.J.) held that a pre-emptor must not only have a subsisting interest in the holding when he files an application for pre-emption, but must continue to hold the self same interest to the date when the case is finally disposed of. A co-sharer means a person whose interest subsists throughout the course of the application to pre-empt and not a person who held such an interest in the beginning, but lost it before its disposal. Equally a fresh interest acquired at a later stage cannot be tacked on to the interest held in the beginning, but lost during the pendency of the application.

The right of pre-emption accrues not on the date of execution but on the date of registration of the document.[36] But in case of sale under the Public Demands Recovery Act, 1913 the cause of action arises from the date of confirmation of sale.[37]

In the case of *Brindaban Chandra Chowdhury v. Musammat Rezia Begum*,[38] two points were raised for decision : (*a*) whether the application for pre-emption is maintainable in view of the provision of sub-section (2) of section 85 of the Non-Agricultural Tenancy Act, and (*b*) whether the petitioner-appellants are co-sharer tenants entitled to pre-empt the disputed transfer within the meaning of section 24 of the said Act.

In this case the appellants, claiming to be co-sharer tenants of the respondents in respect of some non-agricultural land, applied for exercising their right of pre-

34. *Lakhi Kanta v. Sunil Kumar* (1964) 17 DLR 327 : PLD 1965 Dhaka 372; *Chandra Kumar v. Abdul Motaleb*, (1966) 19 DLR (SC) 36.
35. (1966) 19 DLR (SC) 36.
36. *Abdur Rahman v. Baser Ali*, (1969) 21 DLR 599; *Noab Mian v. Golam Hosain*, (1961) 13 DLR 889; *Md. Tarapuddin Akanda v. Md. Idris Ali*, PLD 1961 Dhaka 570.
37. *Begum Syedunnessa v. Shahna Begum*, PLD 1960 Dhaka 626.
38. (1963) 16 DLR 77 : PLR 1963 Dhaka 1051.

emption under the provisions of section 24 of the Non-Agricultural Tenancy Act.

The case of the petitioner-appellants was that the land was part of a tenancy held by two brothers jointly. For mutual convenience the land was subsequently, separately and exclusively possessed by the parties, but there was no division or splitting up of the tenancy itself. According to the petitoner-appellants, the tenancy remained an undivided unit with an annual rent of Rs. 4-4 annas for the entire tenancy. The opposite party respondents contended before the learned Subordinate Judge that the property was partitioned and that the purchaser-opposite-parties purchased a portion of land which was completely separate from the land possessed by the appellants. The learned Subordinate Judge rejected the petition. Praying in aid the provisions of sub-section (2) of section 85 of the Non-Agricultural Tenancy Act, he came to the conclusion that the petitioners could not maintain the application, claiming a right of pre-emption, inasmuch as the provisions of the said Non-Agricultural Tenancy Act did not apply to any non-agricultural tenancy held by a tenant under the Government. At the time when the transferance was made, namely, in the year 1960, the superior right in respect of the land devolved upon the Government. The appellants preferred an appeal to the High Court against the order passed by the Subordinate Judge. The appeal was heard by a Division Bench of the High Court consisting of two Judges, namely, Hasan and Sikander Ali JJ., who differed in their opinion. It was then referred to the third Judge, (Murshd J.) under clause 36 of the Letters Patent.

With regard to the first question as to whether the application for pre-emption is maintainable in view of the provision of usb-section (2) of section 85 of the Non-Agricultural Tenancy Act, the learned Judges arrived at a concurrent finding as to the construction of that sub-section. They held that the right of pre-emption under section 24 will not be affected by transposition of the superior landlord of the

tenancy by Government. The decision on this point has been affirmed by the Full Bench in the case of *Hazi Akhtaruzzaman v. Jadunath Pal.*[39]

As to the second question whether the petitioner-appellants are co-sharer tenants entitled to pre-empt, the learned Judges differed in their opinion. The points of difference were thus formulated:

(1) Has the tenancy in respect of the aforesaid land been split up or divided, even if the land itself has been partitoned as a result of which several persons are separately and exclusively possessing various portions of the said land?

(2) Whether the petitioner-appellants are "co-sharer tenants" in respect of the land in question and, therefore, entitled to exercise the right of such pre-emption under section 24 of Non-Agricultural Tenancy Act?

As to whether the tenancy in respect of the said land has been divided or split up, it appears that Hasan J, has not expressed any definite and positive opinion. But it is obvious from his observations that he was inclined to take the opposite view. He, however, passed on to the question of exclusive possession by the transferor of the land in question. Sikander Ali J, has however come to the definite conclusion that it has not been established that the tenancy under which the aforesaid land is held has not been split up or divided. Hasan J, has taken the view that the right of pre-emption has been given only to a mere co-sharer of the non-agricultural land. He has, therefore, held that, inasmuch as the petitioners are not co-possessors in a physcial sense of the disputed land, they cannot claim a right of pre-emption under the aforesaid section. Sikandar Ali J., expressing a contrary opinion, has held that the said right has been given to a co-tenant who need not necessarily be a co-sharer of the land in a physical sense. According to Sikandar Ali J, the right conferred under section 24 is similar to that which arises under section 26F of the Bengal Tenancy Act, which confers such a right upon one or more co-sharer tenants of the "holding." Hasan J., is of

39. (1965) 17 DLR 384 (FB) : PLD 1967 Dhaka 546.

opinion that the importation of the word "holding" into the Non-Agricultural Tenancy Act is not warranted by the language of the said section.

Murshed J, agreed on all points with Sikandar Ali J, and was of opinion that the appellants are entitled to exercise their right of pre-emption under section 24 of the Act.

In delivering the judgement of the Court Murshed J. observed :

"It is obvious from the phraseology of section 24 of the Non-Agricultural Tenancy Act that a right of pre-emption similar to that conferred by section 26F of the Bengal Tenancy Act was intended to be given to co-tenants under the said section 24. What is required is the sharing of the tenancy itself and furthermore, the tenancy must relate to the land in question. It is true that the petitioner-appellants are not co-possessor of the disputed land in the sense that they do not physically possess the same. But, the portion of the land possessed by them upon mutual partition form part of the same tenancy under which the disputed land was possessed by the predecessors of the respondents. Therefore, the tenancy is one and the land possessed by the petitioner-appellants and that possessed by the respondents form one unit under the said tenancy. The appellants and the respondents may possess by arrangement, *inter se*, diffierent portions of the land covered by the same tenancy, but each of them is liable to pay the same rental for the entire land held under the said tenancy. For the purposes of the tenancy itself the land has not been divided and separate lands, possessed by the appellants and the respondents, constitute one tenancy, namely, the original tenancy as shown in the settlement record."

Then the case of *Hazi Akhtaruzzaman v. Jadunath Pal*,[40] came up before the Full Bench of the Dhaka High Court consisting of Murshed, C.J., Sattar and Salahuddin Ahmed, JJ. in which the propriety of the decision in *Brindaban's case*[41] was doubted. In this Full Bench case a co-sharer of the

40. (1965) 17 DLR (FB): PLR 1966 Dhaka 213 : PLD 1967 Dhaka 546.
41. (1963) 16 DLR 77 : PLR 1963 Dhaka 1051.

suit land transferred his share with structures there on to one Waheda Khatun by a registered *kabala on* the 17th February, 1955. Thereafter she transferred the building only to the pertitoner on the 17th December, 1956, without notice to the co-sharers. The superior interest in respect of the land, namely, rent receiving interest in the land has been acquired, *en mass*, by the Government long before December, 1956 under the State Acquisiton and Tenancy Act, 1950.

An application under section 24 of the Non-Agricultural Tenancy Act, 1949 was filed by opposite parties asking of enforcement of a right in the nature of pre-emption in respect of the same land to which the said applicants were admittedly co-sharers.

Relying on section 85(2) of the Act, the Application was opposed on the ground that section 24 of the afore said Act could not be prayed in and by the applicants because of acquisiton of the superior right in resepct of the suit land by the Government under the aforesaid Act.

The learned Subordinate Judge, who tried the application, came to the conclusion that the applicants (opposite parties) could not avail themselves of the provisions of section 24 of the Act because section 85(2) thereof bars the excrcise of such a right, inasmuch as, at the time when Waheda Khatun had effectd such transfer, the superior right with regard to the land had been acquired by Government under the State Acquisition and Tenancy Act, 1950, although at the time when the Act came into force it was not so acquired by Government.

The applicants (opposite parties), therefore, preferred an appeal which was heard and disposed of by the learned District Judge, Pabana, who, on a discussion of the provisions of the Act, took the view that the application was not barred by the said section 85(2). He, therefore, allowed that appeal as well as the application.

The oposite party in the trial Court (petitioner) then moved the High Court in its revisional jurisdiction and obtained a Rule *Nisi* against the order passed by the learned District Judge.

At the hearing of the Rule, the main point raised on behalf of the petitioner, was that under section 85(2) of the Act application was incompetent. This proposition was strenuously opposed by the original applicants. The Division Bench, which had initially heard the revisional application, was of opinion that the view taken by another Division Bench of this Court in the case of *Brindaban Chandra Chowdhury v. Musammat Rezia Begum*,[42] to the effect that section 85(2) did not take away the right conferred upon a tenant under section 24 of the act, was debatable, and has referred the case to a Full Bench.

It was contended by the petioner that what has been saved by the proviso in section 85(2) is a "vested right" in a tenant, that is to say, a right which has fructified for immediate enforcement, as distinguished from the generality of rights vested in a tenant by the provisions of the Act. It was strenuously contended that the transferance by a co-sharer having taken place after the superior rent receiving interest had been acquired by the Government under the State Acquisition and Tenancy Act, 1950, it cannot be said that any right had "vested" in the petitioner under section 24 and as such the application for pre-emption under section 24 cannot be said to be saved by the proviso to section 85(2).

It was held that in the light of the proviso to section 85(2) of the Act a tenant in respect of a non-agricultural land would not be deprived of a right reposed in him by the provisions of the Act on the only ground of acquisition of superior right in the land by Government. The right vested in a tenant by the provisions of the Act is the right to take advantage of the provisions of the Act, including a right which is immediately enforcable and also a right which is enforceable in future, on the happening of a contingency. Section 85(2) of the Act does not bar the appliation filed by the opposite parties under section 24 of the Act. It was also held that the case of *Brindaban Chandra Chowdhury v. Musammat Rezia Begum*[42] reported in 16 DLR 77, in which it held that such an application under section 24 was competent, was correctly decided.

42. (1963) 16 DLR 77 : PLR 1963 Dhaka 1051.

On the date when the Non-Agricultureal Teancy Act came into force the land not being used as homestedad, it was held that section 182 of the Bengal Teancy Act does not apply and application for pre-emption under section 24 of the Act is maintainable at the instance of a co-sharer tenant.[43]

In the case of *Hazi Akhtaruzzaman v. Jadunath Pal*,[44] it was contended that since the applicant did not choose to exercise the right of pre-emption under section 24 of the Act when a co-sharer had transferred his interest in February, 1955, he should be deemed to have waived the exercise of such a right in respect of the sale in December, 1956. But this argument was rejected by the Court. It was held that if A does not exercise his right against B, it does not and cannot mean that he has also waived a similar but independent right against C. In other words, there is no waiver of the right of pre-emption if a co-sharer does not exercise it on first transfer.

No case for pre-emption under section 24 of the Act would lie when the sole recorded tenant in a *Khanda Khatian*, sells his land.[45] Similarly, in the case of *Nishkar Pan v. Mahadeb Ghosh*,[46] it was held that where the finally published record of rights indicates splitting up of the tenancies and separation of the interests of the co-sharers, the co-sharers must be held to have ceased to be co-sharers, of the land. Hence when one of them transfers his share the others have no right of pre-emption.

The word 'land' in section 24 of the Non-Agricultural Tenancy Act, 1949 is intended to include structures on the land if it is transferred along with land as part and parcel of the land and not separately from the land and the consideration for both is one and the same and in that case the right of pre-emption will extend up to those structures on

43. *Kiriti Bhusan Saha v. Tarubala Dasi*, (1965) 61 CWN 572.
44. (1965) 17 DLR 384(FB) : PLR 1966 Dhaka 213 : PLD 1967 Dhaka 546.
45. *Sri Chakradhar Ghosh Mondal v. Sri Ram Ratan Pal*, (1968) 73 CWN 742.
46. AIR 1972 Cal. 258 : 77 CWN 747.

the land transferred.[47] Similar view has been expressed in *Shyamapada Bhattacherjee v. Satya Gopal Majumdar,*[48] in holding that section 24 is attracted to a transfer of a non-agricultural land with a building thereon. In the case of *Abdul Maleque Lashkar v. Begum Tayabunnessa,*[49] it was argued that where there were structures on the land the tenants would not be non-agricultural tenants and therefore, right under section 24 will not be available. This argument has no substance. It was held that the cases of tenants of non-agricultural land, who have erected structures thereon, are governed by the provisions of the Act.

A lessee taking settlement of some land, even though that may be a protion of a tenancy held by his lessor, establishes no connection whatsoever with the remaining portion of that tenancy. The subject matter of his lease becomes a separate and independent unit and represents his 16 annas interest. He has thus no connection with the remaining interest of his lessor and cannot, therefore, be a co-sharer with respect thereto and is as such not entitled to pre-empt the transfer made by the lessor in favour of a third party under section 24 of the Act.[50]

Where a document was so framed so as to appear to be a sub-lease with considreation of Rs.495 as premium with promise of payment of annas 8a year towards rent together with a statement by the transferor that he had ceased to have any right in property transferred, it was held to be not a sub-lease but a transfer pre-emptable under section 24(1) of the Act.[51] In the instant case Kaikaus J. of the Supreme Court of Pakistan with whom Hamoodur Rahman J. concurred, observed :

47. *Md. Arabullah v. Durga Prasad Tribedi,* (1959) 11 DLR 539 : PLD 1960 Dhaka 249; *Abdul Maleque Lashkar v. Tayabunnessa,* PLD 1966 Dhaka 217 : 18 DLR 618 : PLR 1964 Dhaka 1190.
48. (1963) 67 CWN 599.
49. (1964) 18 DLR 618 : PLD 1966 Dhaka 217 : PLR 1964 Dhaka 1190.
50. *Monindra Chandra Ghose v. Mozibul Islam,* (1960) 12 DLR 785 : PLD 1961 Dhaka 356.
51. *Paresh Nath Sikder v. Abdur Rahman,* (1963) 15 DLR (SC) 425 : PLD 1963 (SC) 473.

"That this deed was so framed only in order to defeat the right of pre-emption is quite apparent because there is no explanation for putting a transfer, the effect of which is to grant all possible rights in the property in dispute to the lessee, in the present form. The only question was whether the respondents had succeeded in putting the transaction in a form in which it will defeat the right of pre-emption, and it appears to us that they have not so succeeded. The legal effect of the document is to extinguish the title of the so-called lessors in the property and to vest it henceforth in the so-called lessees."

Lease of tenancy by a tenant is a sub-lease and is excluded from the purview of section 24(1) of the Non-Agricultural Tenancy Act.[52]

Section 24 governs the transfer of non-agricultural land by an under-tenant.[53]

A *nadabipatra* being merely a deed of disclaimer disclaiming any interest in the properties transferred by an earlier sale-deed is not itself a deed of transfer and, therefore, no right of pre-emption can be claimed upon the registration of such a deed of *nadabipatra.*[54] The fact that the document was registered and *ad-valoren* Stamp-fee was paid on the document by itself cannot turn a deed of disclaimer into a deed of transfer.[55]

In the case of *Abul Hossain v. Md. Masim Ali Gazi,*[56] an important point of law was involved. In this case, during the

52. *Paresh Nath Sikadar v. Abdur Rahman Jamadar,* (1963) 15 DLR (SC) 425 : PLD 1963 (SC) 473.
53. *Sudhangshu Kumar Saha v. Sm. Pravalata Nandy,* (1964) 69 CWN 836; *Achala Sundari Dassi v. Satish Chandra Mondal,* (1953) 57 CWN 703 : AIR 1954 Cal.28.
54. *Muhammad Arabullah v. Durga Prasad Tribedi,* (1959) 11 DLR 539 : PLD 1960 Dhaka 249.
55. *Ibid.*
56. (1967) 19 DLR 677 : PLD 1969 Dhaka 923; *Biswaswar Roy v. Joytennessa,* (1961) 13 DLR 287; *Mafizuddin v. Hasmaternessa,* PLR 1961 Dhaka 1309; *Abdus Sattar Mallik v. Ynus Mallik* (1959) 12 DLR 849 : 1960 PLR 983; *Sital Chandra Koley v. Mihilal Koley,* (1954) 58 CWN 1000; *Tarapada Karati v. Sudhamony Dolui,* (1948) 53 CWN 678.

pendency of the pre-emption proceeding the suit land was reconveyed to the original transferor. It was held by Murshed C.J., that if there is a transfer of a land by a co-sharer the application for pre-emption by another co-sharer cannot be defeated by subsequent re-conveyance of the land by the original co-sharer. In arriving at this conclusion the learned Chief Justice observed :

"The sale and agreement to re-convey would not amount to mortgage having regard to the express language of the amended Transfer of Property Act. However, an agreement to re-convey the land may be enforced independently, as an agreement against the promisor. If there is a conveyance of land by a co-sharer to a stranger and contemporaneously there is an agreement for its re-conveyance, it is an agreement between the latter and the former. The agreement would stand good, but it cannot operate to defeat the right of the pre-empting co-sharer who will take the land subject to the agreement to re-convey the same, if the pre-empting co-sharer had notice of the agreement prior to his application for pre-emption. If the pre-empting co-sharer was aware of the agreement of re-conveyance, the pre-emption will be allowed subject to the agreement for re-conveyance of the land, that is to say, the original co-sharer can make the pre-empting co-sharer transfer the land to him on re-pyament of the loan unless otherwise prevented by other considerations. In no case, however, such a reconveyance would be allowed to defeat an application for pre-emption under section 96 of the Act, if such a re-conveyance was effected on an alleged agreement to that effect, after the application for pre-emption had been filed against the pre-empting co-sharer. In such a case the agreement for re-conveyance cannot be enforced because the application for pre-emption was made at a time when he had no notice of the re-conveynace."

Dealing with the question whether question of title can be decided in a pre-emption proceeding, it was held in the case of *Sheikh Hossain Ali v. Kala Chand Ghose*,[57] that it is

57. (1947) 51 CWN 415.

impossible to maintain that no question of title can be determined in a pre-emption proceeding. While the Court may decline to go into complicated question of title in such a proceeding, it has jurisdiction to do so and is not bound to relegate the parties to a title suit in every case. In a single Bench decision of the Dhaka High Court in the case of *Barkat Ali Mondal v. Masem Ali Biswas*,[58] it was held that the court is not precluded from going into the question of title in a pre-emption proceeding; but if very complicated questions of title are raised in such a proceeding it will be at the discretion of the Court to relegate the parties to a regular title suit. But in a Division Bench of the said High Court in the case of *Md. Umed Ali Fakir v. Shamsuddin Ahmed*,[59] M. R. Khan and Maksum-ul-Hakim, JJ, held that the question of title cannot be decided in the pre-emption proceeding.

Now we may pass on to the question whether the question of *benami* can be decided in a pre-emption proceeding. In a case[60] under the Bengal Tenancy Act it was held that if a question is within the proper scope of an enquiry under section 26F of the Bengal Tenancy Act, it can and must be gone into and the decision thereon will operate as res *judicata* in a subsequesnt suit. If a question is raised that a purported transfer is not a real transfer but a *benami* transaction in the sense that the transferee holds the property on behalf of the transferor, such a question falls within the proper scope of enquiry under section 26F. If the question is raised by a person other than the transferor, the transferor may and ought to be made a party to the proceeding under section 26F.

In the case of *Haji Wahab Ali v. Kadam Ali*,[61] Asir J., held that it is well settled that a benamdar can sue and be sued and there is no reason to suppose that a *benamdar* cannot be deemed to represent the real owner while the litigation is with a third party.

58. (1954) 6 DLR 589.
59. PLD 1968 Dhaka 480.
60. *Balai Chand Mondal v. Nibaran Chandra Das* (1947) 51 CWN 644.
61. (1962) 24 DLR 204; PLD 1963 Dhaka 364.

In the case of *Rukmini Debi v. Mihir Bala Sarkar*,[62] a question was raised whether the petitioner who said in the earlier proceeding that the disputed lands were non-agricultural is estopped from setting up a case that they were not non-agricultural in subsequent proceeding. The facts of this case were that Mihir Bala, the opposite party, filed an application for pre-emption of the lands in suit under section 8 of the West Bengal Land Reforms Act, 1955. The application was opposed by the petitioner, Rukmini, who contended that the lands were non-agricultural lands governed by the West Bengal Non-Agricultural Tenancy Act and not by the Land Reforms Act, 1955. The Revenue Officer held on merits that the lands were non-agricultural and the application of Mihir Bala (opposite party) was rejected.

Mihir Bala thereafter filed an application for pre-emption under section 24 of the West Bengal Non-Agricultural Tenancy Act, 1949. That application was allowed on the finding that the lands were non-agricultural and the provisions of the Non-Agricultural Tenancy Act, 1949 applied. On appeal the decision of the trial Court was affirmed. The petitioner thereupon obtained the Rule. It was contended on behalf of the opposite party that the petitioner having adopted the position that the lands were non-agricultural in the earlier proceeding was estopped from setting up a case that they were not non-agricultural in the present proceeding. It was held that the Court can entertain and decide the application under Section 24 of the West Bengal Non-Agricultural Tenancy Act only if the tenancy is a non-agricultural one which as a jurisdictional fact will have to be decided on the evidence to be adduced by the parties and the petitioner cannot be barred by the doctrine of estoppel from producing before the Court relevant evidence which has a bearing on the question of the Court's jurisdicition.

In the case of *Meghu Bepari v. Kaloo Sheikh*,[63] it was pointed out what would be the duty of the Court when the allegation of a collusive suit is made to defeat pre-emption. In

62. (1977) 81 CWN 481.
63. (1966) 18 DLR 317.

this case the petitioner, Meghu Bepari, made an application under section 24 of the Non-Agricultural Tenancy Act, 1949 for pre-emption of the suit land on an averment that one Mahiran Bewa had transferred the same by a *heba* to a stranger, namely, to opposite party, Kaloo Sheikh, the adopted son of the said Mahiran Bewa. It is not disputed that the petitioner is a co-sharer of Mahiran Bewa. The alleged *heba* took place on the 20th of November 1962, and the application for pre-emption was filed shortly thereafter, i.e. on the 30th of November, 1962. After the filing of the application by the peitioner, Mahiran Bewa instituted a suit against the aforesaid transferee, by which she impeached the transferance of the land to the latter by *heba*. The suit was decreed *ex-parte* in her favour. The result of the decree is that the transfer was set aside. It may be noted that the said decree was passed during the pendency of the application for pre-emption. Before the learned Munsif, in whose Court the aforesaid application under section 24 of the Act was pending, it was contended, in opposition to the said application that, inasmuch as there was no transfer of the suit-land by Mahiran Bewa, the petitioner's application was not maintainable. The learned Munsif however, came to a finding that the aforesaid suit for setting aside the transfer by *heba* was collusive, and he, therefore, allowed the application.

An appeal was preferred by the opposite party and the Appellate Court below was unable on the facts and circumstances of the case, to arrive at a finding that the aforesaid suit was collusive. It was argued that the Court is competent upon an application of this nature to adjudicate whether the suit is collusive or not. Reliance was placed on a decision of the Dhaka High Court in the case of *Surendra Chandra v. Sree Nath*.[64] In that case it was held that a Court is competent to go into the question whether the sale was set aside by a collusive suit or not.

The appellate Court below after distinguishing the *Surendra Chandra's case*[64] and, on a finding that it was

64. (1948) 9 DLR 229.

unable to spell any fraud with regard to the suit in question, allowed the appeal and dismissed the application. The petitioner thereafter moved the High Court in its revisional jurisdiction. But the Court discharged the Rule.

It was held that *Surendra Chandra's case*[64] is merely an authority for the proposition that a Court is not incompetent to decide as to whether the sale in question has been set aside by a collusive or fraudulent suit. It is no authority for the proposition that in every case, where a Court finds that there has been a fraudulent suit, it must necessarily allow an application under section 26F of the Bengal Tenancy Act. On the contrary, it is clear that each case must be decided on its own particular facts. In an application of this nature, for example, an application, either under section 26F of the Bengal Tenancy Act or under section 24 of the Non-Agricultural Tenancy Act, 1949, what is required is, that the Court must examine, fairly and clearly, the facts of the case and decide for itself whether a transfer is subsisting. A Court in disposing an application for pre-emption may go into the question as to whether a suit for setting aside the relevant sale was collusive or fraudulent, but a finding to that effect would not necessarily become the decisive factor in disposing of the application. What must be looked into is the conduct of the parties; if it leads to a position that a transferance still subsists, then the application should be allowed.

In a proceeding under section 24 the decision of the question whether or not the transaction in dispute is within this section is a matter relating to jurisdication of the Court.[65]

In the case of *Abdul Khaleque v. Jadav Chandra Mali*,[66] a question was raised whether amendment of pleadings may be allowed in a pre-emption proceeding before the High Court in revision. In this case the pre-emptor opposite-party finding that his application for pre-emption was not governed by

65. *Paresh Nath Sikdar v. Abdur Rahman*, (1963) 15 DLR (SC) 425 : PLD 1963 (SC) 473.
66. (1968) 20 DLR 562 : PLD 1970 Dhaka 10.

section 96 of the State Acquisition and Tenancy Act, 1950, made a petition under Order 6, rule 17 read with section 151 and section 153 of the Code of Civil Procedure before the High Court for amendment stating that the application be treated as having been filed under section 24 of the Non-Agricultural Tenancy Act, 1949. It was held that it is too late for the petitioner to wake up at this stage for amendment of the pleadings.

An objection cannot be raised for the first time in revision when it was not mooted at the time of argument before the trial Judge or before the lower appellate Court or in the grounds of the Rule.[67]

Section 24(2) requires that an application for pre-emption must be accompanied by a deposit of the entire consideration money or the value of the property transferred as stated in notice served under section 23, together with compensation at the rate of 5 *per centum* thereon. The deposit is a condition precedent to the application being entertained and its non-fulfilment will render the application liable to be summarily dismissed.

This sub-section corresponds with section 26F(2) of the Bengal Tenancy Act which provides that unless the applicant at the time of making an application for-pre-emption deposits in the Court the amount of consideration money his application shall be dismissed. Similar provisions are to be found in sub-section (2) of the West Bengal Non-Agricultural Tenancy Act. In view of the similarity of the provisions in the above Acts, the decisions under those Acts may be referred to.

A single Bench decision of the Calcutta High Court held in *Sachindra Nath Chakraborty v. Trailakyanath Chakraborty*,[68] that the Court has no power to extend the time for making a deposit by a co-applicant beyond the period of time mentioned in clause *(a)* of sub-section*(4)* of section 26F

67. *Sailendra Nath Neogy v. Purnendu Sen*, AIR 1971 CAl. 169.
68. AIR 1936 Cal. 576 : ILR (1937) 1 Cal. 112 : 49 CWN 1023.

of the Bengal Tenancy Act. A Division Bench of that Court in *Nural Hossain Mallick v. Mihilal Sheikh*,[69] dissented from the above single Bench decision and held that an application for pre-emption under section 26F of the Bengal Tenancy Act will not be dismissed if the circumstances are such that the deposit may be deemed to have been made at the time of making the application. Another Division Bench of that Court in *Prabartak Jute Mills Ltd. v. Anila Devi*,[70] held that under section 24 of the West Bengal Non-Agricultural Tenancy Act an order for pre-emption can be made, in a case where no notice under section 23 of the Non-Agricultural Tenancy Act had been served, even though the entire deposit contemplated in the section had not been made at the time of application, provided it was made before the order was passed. Even in cases where notice under section 23 of the West Bengal Non-Agricultural Tenancy Act had been served, though deposit is essential, the time stated in section 24 of the Act is not so essential as to compel the Court to dismiss the application if such deposit is not made at the time of filing the petition. The date of deposit might be treated as the date when the petitionis presented and/or the application for pre-emption is made and an order for pre-emption can be made provided such deposit was made within the time prescribed. The time for making the application can be taken to mean the time of actual moving of the application in Court and not the time of filing the application.[71] In the case of *Dwijapada Halder v. Prafulla Chandra Halder*[72], it was held that where there are mandatory provisions in the statute that an application for pre-emption shall be rejected if the applicant fails to deposit the considreation money at the time of making such application, even then in view of the above decisions of the Court as referred to above, such applications could not be

69 AIR 1948 Cal. 144; followed in *Babul Haque v. Sm. Laljan Bibi* (1956) 10 DLR 54.

70. (1955) 59 CWN 939 : 8 DLR 22.

71. *Prabartak Jute Mills Limited v. Anila Devi*, (1955) 59 CWN 939 : 8 DLR 22.

72. AIR 1972 Cal. 409.

rejected if the consideration money is paid subsequently within the period of limitation.

Partial pre-emption is not permissible in Law.[73] In this connection we may refer to some cases decided under the Bengal Tenancy Act allowing proportionate deposit in a pre-emption procedding. In the case of *Diam Hossain v. Haran Das*,[74] two schedules of lands were transferred to the purchaser and the notice of the transfer as required under section 26C of the Bengal Tenancy Act was not served on the co-sharer. The two schedules appertained to different holdings. The price of schedule I was mentioned as Rs.400 and the price of scedule 2 which were the disputed lands was mentioned as Rs.600 in the deed of sale. The pre-emptor applied for pre-emption of the lands in schedule 2. It was held that this will not be a case of partial pre-emption. But if notice under section 26C was served and the price of the properties sold to the purchaser was mentioned to be Rs.1,000 in that case the pre-emptor would be bound to deposit the entire amount as mentioned in the notice although he seeks to pre-empt one of the two schedules transferred to the purchaser.

In the case of *Brojendra Chandra Saha v. Debendra Chandra Saha*,[75] the petitioner Brojendra Chandra Saha, a stranger purchaser, purchased one Adhar's share in two holdings, one recorded in *Khatain* Np. 200 and another in *Khatian* No. 208 of a certain *mouza*. Applicants Debendra and Jatindra were co-sharers of Adhar in respect only of *khatian* No. 208. They had no share in the other holding. No notice of the transfer was served on Debendra and Jatindra. Along with their application for pre-emption which related only to the transfer of 48 acre of the holding in *khatian* No. 208, they

73. *Giri Bala v. Basudev* (1977) 32 DLR 68; *Aktamunnessa v. Habibullah* (1979) 28 DLR 400; *Tamizuddin Ahmed v. Guljan Bibi*, (1970) 26 DLR 93; *Abdul Kader v. Md. Seraj Khan*, (1964) 17 DLR 565; *Salimuddin Mondal v. Mohitosh Biswas*, (1962) 14 DLR 796; *Syed Abdul Karim v. Harendra*, (1961) 14 DLR 847; *Makhan Lal Nag v. Reazuddin Sepai* (1960) 13 DLR 323 : PLD 1962 Dhaka 545; *Babul Haque v. Sm. Laljan Bibi*, (1956) 10 DLR 54.

74. (1960) 13 DLR 283.

75. (1965) 17 DLR 618.

deposited the proportionate consideration together with the stautory compensation.

It was urged on behalf of the peritioner that the *kabala* evidenced a single transaction and, therefore, whether or not the applicants were co-sharer-tenants of both the holdings, they were bound to deposit the entire consideration money mentioned in the *kabala*. It was held that there is no justification to require of an applicant who is entitled to, and claims, pre-emption in respect of one or more of many holdings, that might have been transferred by a single document, to pay the sum total of the consideration of the deed of transfer.

In the case of *Mosammat Asiman Nessa v. Md. Akbar Ali Sheikh*,[76] Murshed C.J., and Abdulla J., took the view that the right of pre-emption is given to the co-sharer under section 26-F of the Bengal Tenancy Act (corresponding to section 96 of the State Acquisition and Tenancy Act) with reference to the holding, that is to say, that the right acrues holding-wise. It must necessarly follow that even if there has been a sale of several holdings by one transaction and by a single document, a co-sharer has a right under the aforesaid section, in respect of a particular holding covered by the same document and of which he is to be a co-sharer. It would be a misnomer to describe it as a partial transaction.

In the case of *Serajuddin Ahmed v. Sardar Ali*[77], a co-sharer tenant applied for pre-emption of a holding which was transferred by the vendor along with other two holdings in a single sale-deed and in respect of the latter two holdings the applicant was not a co-sharer and deposited consideration money in respect of the holding sought to pre-empt. It was contended that it was a case of partial pre-emption which was not legally permissible. But this contention was overruled. It was held that it is not the case of partial pre-emption. An application for pre-emption only in respect of such holding as

76. (167) 19 DLR 659 : PLD 1967 Dhaka 783; See also *Hajee Majar Ullah v. Mvi Nurul Haque*, (170) 23 DLR 68.
77. (1969) 22 DLR 64.

the applicant is entitled to pre-empt is maintainable and it would satisfy the requirement of law to make a proportionate deposit of the consideration money for the same.

When under one conveyance, two holdings are sold, one application for pre-emption covering both the holdings is sufficient.[78] Conversely, two distinct applications may be made in two different periods within the prescribed period of limitation.[79] The provision of Order 2, rule 2 of the Code of Civil Procedure has, therefore, no manner of application to a case like this.[79]

In the case of *Hajee Majarullah Sowdagar v. Mvi Nurul Haque*,[80] one application for pre-emption was filed with regard to three independent sales of several holdings to which the applicant was a co-sharer tentant, it was held that the application is maintainable if it is not barred by limitation and not also barred otherwise.

Joint deposit can be made under section 24 of the Act. It was argued in the case of *Abdul Maleque Laskar v. Begum Tayabunnessa*[81] that as the deposit of the stipulated price was made jointly on behalf of both the applicants, who are husband and wife, there was no sufficient compleance with the law which requires such deposit to be made by the applicant himself. The learned Munsif was of the view that as between the husband and wife this point was not of much consequence. The learned Judges of the High Court held that the correct position in law with regard to the joint deposit is that the same sum of money is being deposited by both or either of them jointly. No objection can be taken by the petitioner on the ground that the money was deposited by the husband and the wife jointly. He is merely concerned with the

78. *Mst. Asimon Nessa v. Md. Akbar Ali Sheikh*, (1967) 19 DLR 659 : PLD 1967 Dhaka 783; *Brajendra v. Debendra*, (1965) 17 DLR 618; *Hari Charan Kar v. Abhoy Charan Dey*, (1955) 59 CWN 849 : 8 DLR 22.
79. *Mst. Asimon Nessa v. Md. Akbar Ali Sheikh*, (1967) 19 DLR 659 : PLD 1967 Dhaka 783.
80. (1970) 23 DLR 68.
81. (1964) 18 DLR 618 : PLD 1966 Dhaka 217 : PLR 1964 Dhaka 1190.

deposit. It does not mean that the husband deposited half the amount and the wife had deposited the other half. Both have deposited the same amount jointly and severally.

Money to be deposited in Court is usually deposited in the Treasury under orders of Court and that is the usual mode of depositing money in Court. So when the deposit under section 24(2) of the Act is made in the Treasury and not strictly in Court, the deposit is held to be a valid deposit in law.[82]

In the case of *Mahendra Chandra Deb Roy v. Saraswati Rani Pal*,[83] it was contended that the value of the property and the compensation constitute the price of the property in determining the jurisdiction of the Court. But this contention was overruled. It was held that the legislature has clearly indicated that it made a distinction between the value of the property and the compensation. It sepaks of depositing the value of the property 'together with compensation.' Therefore consideration money and the compensation are different matters. The statutory compensation cannot be regarded as the value of the land for the purpose of jurisdiction of the Court.

Sub-section (3) lays down the procedure to be followed by the Court when the deposit as required by sub-section (2) is made. It provides that if such deposit is made, the Court will give notice to the transferee to appear on a fixed date and to state what other sums he has paid in respect of rent after the date of transfer or in annulling encumbrances on the property and the amount he has spent in erecting any building or structure or in making any improvement in the portion or share of the property between the date of transfer and the date of service of notice of the application. After considering these points the Court will direct the applicant or applicants to deposit the amount paid or spent by the transferee within the period allowed by the Court together with interest at the rate of $6\frac{1}{4}$ *per centum per annum.*

82. *Haricharan Kar v. Abhoy Charan Dey*, (1955) 59 CWN 849 : 8 DLR 22.
83. (1969) 21 DLR 404; *Abul Hossain Howlader v. Pulin Behari Sikdar*, (1969) 22 DLR 535; *Ajit v. Hacharaddin*, (1966) 18 DLR 632.

If the correctness of the amount paid or spent by the transferee is disputed by any applicant, the Court shall enquire into such dispute and after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by him. The Court shall then direct the applicant or applicants to deposit the amount so determined with interest at the rate of $6\frac{1}{4}$ per centum per annum within such period as the Court thinks reasonable.

Under this sub-section the transferee is entitled to compensation for any building or structure erected by him between the date of transfer and the date of receipt of notice of application for pre-emption.[84] But he has not been given the right of removal of the structure or building erected by him, as it impairs the value of such building.[84] The transferee is also entitled to get compensation for improvement in the portion or share of the property. The payment of compensation for improvement is a condition precedent to allow an application for pre-emption.[85] The question whether the transferee has effected an improvement in the property is a question of fact.[86]

Sub-section (4) gives the remaining co-sharer tenants an opportunity to join as co-applicants in the pre-emption proceeding. It provides that when an application has been made under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months as referred to in sub-section (1) or within one month of the service of notice of the application, whichever is later, apply to join in the application for pre-emption. Any co-sharer tenant who will not apply either under sub-section (1) or under this sub-section shall not have any further right to exercise the right of pre-emption.

A co-sharer after service of notice on him may either join in the original case for pre-emption or may bring a separate

84. *Muhammad Arabulla v. Durgaprasad Tribedi*, (1959) 11 DLR 539 : PLD 1960 Dhaka 249.
85. *Serajuddin Ahmed v. Haris Mia*, (1968) 20 DLR 312; *Noab Mian v. Golam Hossain*, (1961) 13 DLR 889.
86. *Noab Mian v. Golam Hossain*, (1961) 13 DLR 889.

independent case within time limit.[87] One of the several co-sharers is entitled to pr-empt to the extent of his own share in a pre-emption case.[88]

An application filed under sub-section (1) gives the right to the other co-sharer tenants to join as co-applicants and once they file an application to join as such and make the deposit, they shall be deemed to be co-applicants under sub-section(1) and this right cannot be defeated by subsequent withdrawal of the original application.[89]

Retirement ot the original applicant from the case either by withdrawal or by default, will enable the co-applicant, if he so wishes, to get the entire subject matter, which, had the applicant continued, would have been available to them both together.[89] In a case where the applicant happens to retire, the Court concerned should call upon the co-applicant to make further deposit necessary and the statutory compensation payable thereon.[89]

The scheme of the section is that in the event of the claim of pre-emption being allowed, the amount deposited by the original applicant will go to the transferee.[89]

In the case of *Abdul Kader Pradhania v. Md. Seraj Khan*,[90] the petitioner made his application within time and along with it also submitted chalan in triplicate, with a prayer for permission to make the necessary deposit. The challans were not received back by him from the office of the Court till after the expiry of the period fixed by the Court for the deposit in question. After the receipt of the challan the Court accepted the deposit and added the petitioner as a co-applicant. It was held that the order is valid.

When the original application for pre-emption under sub-section (1) fails on the ground of limitation, the co-applicants' prayer for rateable pre-emption (according to their share)

87. *Jamiyat Ali v. Mrs. Chemon Ara Begum*, (1967) 20 DLR 480.
88. *Ruhul Amin Mestory v. Fazar Banu*, (1969) 21 DLR 647.
89. *Abdul Kader Prodhania v. Mohammad Seraj Khan*, (1964) 17 DLR 565.
90. (1964) 17 DLR 565.

under sub-section (4), though made in time, cannot be sustained.[91]

The transferor of the property is no doubt a co-sharer of the property transferred but he cannot like other co-sharers claim for pre-emption in respect of the property transferred by him. For determination of the case the transferor may be proper party but not a necessary party in the suit for pre-emption. Non-inclusion of the transferor will not bring the case within the mischief of defect of party in order to get a dismissal order of the casse[92] But he is a necessary party if after his transfer, he still redmains a co-sharer in respect of the property sold by him.[92] For instance, if it is found that the vendor has some interest left in the holding even after the transfer in question and thus he is still a co-sharer in the holding, in that case there cannot be any doubt that he is a necessary party in a pre-emption proceeding. [93] If he is not a necessary party in a pre-emption proceeding, he cannot have any *locus standi* to maintain an application under Order 9, rule 13 of the Code of Civil Procedure for setting aside an *ex-parte* order in the pre-emption proceeding only because he was made a party by the petitioner in the said proceeding by mistake.[94]

In a case under section 96 of the State Acquisition and Tenancy Act, 1950 it was said that it cannot be held that the application was not maintainable because necessary parties were impleaded by subsequent amendment after the expiry of the period of limitation as has been laid down in sub-section(1) of the said section, when the application for pre-emption itself was made in time.[95]

If any relief is prayed for against any party so added the question of limitation would become relevant.[96] Where the

91. *Bijan Bala Chowdhurani v. Maniruddin Biswas* (1970) 24 DLR 170.
92. *Ruhul Amin Mestory v. Fazar Banu*, (1969) 21 DLR 647; *Seferaddi Munshi v. Farman Ali Mirdha*, (1950) 4 DLR 621.
93. *Monahar Ali v. Abdul Majid*, (1971) 26 DLR 359.
94. *Ibid.* ; see also *Seferaddi Munshi v. Farman Ali Mirdaha*, (1950) 4 DLR 621.
95. *Nekjan Bibi v. Sarojan Bibi*, (1967) 19 DLR 655.
96. *Nekjan Bibi v. Sarojan Bibi*, (1967) 19 DLR 655.

heir of transferee is added in a pre-emption case after the period of limitation, the claim for pre-emption against such heir is barred.[97] Again, if any added party himself claims any relief under the section 96 the question of limitatioin may again be attracted,[98] But if the applicant for pre-emption subsequently seeks to add other co-sharers as parties in an application without claiming any relief against any other added parties, no further question of limitation, apart from what has been provided for by sub-section(1) would arise.[98]

A suit does not abate if unnecessary parites are not substituted. After the filing of the application for pre-emption and lapse of statutory period of limitation to pray for rateable pre-emption the co-sharers tenants and other parties concerned become unnecessary parties and as such Rule cannot be affected for not substituting the heirs.[99]

The application to join as a co-applicant shall be dismissed if the applicant does not deposit in court the amount of his share for payment to the original applicant within the period as the Court may fix. If such deposit is made, the Court shall grant the application to join and thereafter he will be deemed to be an applicant under sub-section (1).

The procedure provided in the Civil Procedure Code is applicable to a pre-emption proceeding. Order 1, rule 13 of the Code provides that all objections on the ground of non-joinder and misjoinder of parties shall be taken at the earliest possible opportunity, and any such objection not so taken shall be deemed to have been waived.[98] Such objectioin could not be raised during the trial or at the appellate stage.[1] The High Court may, however, interfere in revision in case of grave injustice or hardship.[1] In the instant case M. R. Khan, J. with whom Maksum-ul-Hakim, J. concurred, observed: "We are quite conscious of the limitation on our revisional power under section 115 of the Code. Ordinarily erroneous decisions of fact are not revisable, but the exercise of the High Court's

97. *Giri Bala v. Basudev* (1977) 32 DLR 68.
98. *Nekjan Bibi v. Sarojan Bibi*, (1967) 19 DLR 655.
99. *Binodini Dasi v. Mati Lal Sikder*, 1969 21 DLR 262.
1. *Jamiat Ali v. Mrs. Chemon Ara Begum*, (1967) 20 DLR 480.

revisional jurisdiction is called for in cases where the decisions are based on no evidence or inadmissible evidence or are so perverse that grave injustice or hardship would result therefrom. In the present case, there has been mis-construction of the oral evidence of two witnesses. Moreover, some material facts and circumstances having a great bearing on the question of limitation did not at all receive the consideration of the appellate Court."

Under sub-section (5) if the deposits as required under sub-section (2) of sub-section (3) or clause *(b)* of sub-section (4) are made, the Court shall make an order allowing the application for pre-emption and directing payment to the transferee or to such persons as the Court thinks fit.

Sub-section (6) provides that if the applicant or the co-applicant whose application for pre-emption is granted, disputes the correctness of the consideration money as stated in the notice under section 23, the Court shall enquire into such dispute before making an order under sub-section (5) and determine the amount of consideration money which the transferee has actually paid for the transfer of the property. The amount so determined by the Court shall be deemed to be the consideration money.

Sub-section (7) applies when more than one co-sharer tenant are applicants for exercising the right of pre-emption. In making an order for pre-emption under sub-section (5) the Court, on its own initiative or on the request of any applicant, would apportion the propety amongst the applicants for pre-emption in such manner as it considers fair and equitable, after taking into consideration the existing possession of the respective parties. The expenses of apportionment are to be paid by the applicant by deposit in Court within the date fixed by it.

The apportionment of land is nothing but partition amongst the applicants. But such apportionment will not operate as a division of the tenancy.

Sub-section (8) provides that from the date of the order allowing pre-emption under sub-section (5) the right, title and interest in the share or portion of the non-agricultural land

accruing to the transferee from the transfer shall vest free from all encumbrances, which have been created after the date of transfer, in the co-sharer tenant whose application for pre-emption has been allowed. The liability of the transferee for rent of the property from the date of transfer shall cease. On further application the Court may place the applicant in possession of the property.

Under this sub-section, the pre-emptor is entitled to delivery of pre-empted property in execution of the pre-emption order. That execution will have to be levied in the Civil Court and according to the Civil Procedure Code in the same manner as execution of Civil Court decrees and disputed question of allotment can be investigated in such proceeding.[2] No separate suit is necessary.[3]

In a pre-emption case, delivery of possession would be effected against the purchser alone and not against the other co-sharers of the holding who were mere parties only to afford them an opportunity for joint or proportionate pre-emption.[4]

Sub-section (9) makes provision for appeal from an order made on an application for pre-emption. This sub-section provides: "An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals."

In the case of *Kafiluddin Chowdhury v. Dr. Abdus Sattar*,[5] the question that called for consideration was whether appeal lies against an order of dismissal for default. In this case the petitioner Kafiluddin Chowdhury filed an application under section 24(1) of the Non-Agricultural Tenancy Act for pre-emption of a plot of land in the Municipality of Chandpur. There was another application by him in regard to an adjacent plot of land under the same section. Both the applications were dismissed for default by the trial Court and

2. *Tarapada v. Hare Krishna*, (1956) 61 CWN 241.
3. *Mohini Mohan Mitra v. Radha Sundari Dassi*, (1935) 39 CWN 1014.
4. *Haji Md. Shariatullah v. Ashrafun Nessa Bibi*, (1975) 28 DLR (App l. Div.)91.
5. (1968) 20 DLR 1220.

the petitioner had to file two appeals both of which were dismissed on the ground of not being maintainable. The petitioner thereafter moved the High Court in its revisional jurisdiction. The learned Judges of the High Court discharged the Rule. It was held that no appeal whould lie under Order 43, ruled 1(c) of the Code of Civil Procedure against an order dismissing an application made for pre-emption under the Non-Agricultural Tenancy Act.

A bare reading of section 141 of the Civil Procedure Code makes it clear that the provisions made therein are in regard to procedural matter. This section will have not application in regard to a matter relating to a substantive right, such as right of appeal.

Order 9 rule 9 of the Civil Procedure Code provides that there may be an application for restoration of asuit dismissed for default. This is a procedural matter and as such this rule cannot have the effect of conferring a substantive right of appeal. In the absence of there being any provision of appeal against an order of rejection of a petition for restoration of the dismissal of an 'application', the aid of section 141 of the Code cannot be invoked for filing an appeal.

In the case of *Ibrahim Hosain v. Md. Khorshed Ali*,[6] the question for determination was whether the application under Order 9, rule 13 of the Civil Procedure Code is applicable in a proceeding under section 24 of the Non-Agricultural Tenancy Act. It applicable, whether appeal will lie to the High Court under Order 43 rule 1(d) C.P.C. or the revision is the appropriate remedy in the circumstances of the case.

In this case the petitioners (purchasers) have not availed of their staturoty right of appeal against the *ex-parte* order dated 25-9-75 allowing pre-emption. They have preferred applications under Order 9, rule 13 of the Civil Procedure Code for setting aside the above order. The Misc. cases under Order 9, rule 13 of the Code of Civil Procedure were heard and dismissed on 26th May, 1976 mainly on the ground that application under Order 9, rule 13 of the Civil Procedure Code

6. (1977) 31 DLR 407.

is not maintainable in a proceeding under section 24 of the Non-Agricultural Tenancy Act and that the petitioners failed to prove the case attempted to be made out in the petition. Being aggrieved by the decision of the learned Munsif, Mymensingh Sadar, the petitioners (purchasers) moved the High Court under its revisional jurisdiction and the Rule was made absolute. It was held that the procedure provided in the Code in regard to suits are applicable in all independent proceedings of original nature. Non-Agricultural Tenancy Act does not specifically make the Code of Civil Procedure applicable to a case under section 24 of the Act. Section 4 of the Civil Procedure Code does not limit or otherwise affect any Special law; in other words, the provisions of the Code of Civil Procedure which run counter to the special or local law are excluded. This section does not bar the applicabilty of the Code where special law or local law is silent.

An order passed in a proceeding like the present one is not a decree as defined in the Code of Civil Procedure and there is also not doubt that in view of the Provisions of section 141 read with section 4 Civil Procedure Code, the provision of Order 9, rule 13 is applicable in a proceeding like the present one but there is no appeal against the order passed under Order 9, rule 13 of the Civil Procedure Code in these proceedings. In view of section 141 of the Civil Procedure Code the provisions applicable in a suit have been also made applicable to the proceeding as far it can be made applicable. Order 9, rule 13 though relates to a decree in a suit is equally attracted and applicable with regard to the order passed in the proceedings though the orders are not decrees in the technical sense of the term.

Sub-section (10) saves the Muslim law of pre-emption from the operation of this section. If there is any competition between the right given by the Muslim law and the right created by statute in this section, the right under the former will prevail. Thus if one co-tenant elects to bring an application under this section and another brings a suit under the Muslim law, and neithter joins with the other, the application under section 24 should not be disposed of without first hearing the suit under the Muslim law or both should be heard together, and if the plaintiff in the suit succeeds on merits, the application under section 24 should be dismissed.[7]

According to sub-section (11) the right of pre-emption is not available in the following cases :—

(1) Transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, i.e. when the transferee is one of the original co-tenants. A co-sharer by gift is a co-sharer whose interest has accured 'otherwise than by purchase' and when such a co-sharer makes a subsequent purchase in respect of a portion of the same holding he is protected from pre-emption.[8]

Section 24 (11) of this Act corresponds with section 26F (1) of the Bengal Tenancy Act. In view of the similarity of the corresponding provisions in the two Acts, the decisions under the Bengal Tenancy Act may be referred to.

In the case of *Tamizunnessa v. Umar Ali,*[9] it was held that where a transfer is made by one deed to a co-sharer as well as to strangers, pre-emption with regard to the transferred portion to strangers may be allowed. This view finds support from a Division Bench decision of the Calcutta High Court in the case of *Khodeja v. Md. Abdul Khalique,*[10] In that case certain co-sharers in a holding transferred their interests to another co-sharer and seven strangers. Derbyshire, C.J. and Mukherjee, J. took the view that the transfer to a co-sharer not being pre-emptible, in view of clause *(a)* of sub-section (1) of section 26F, the application for pre-emption could be considered to the extent of the transfer in favour of the seven strangers. It was said that in such a case the right of pre-emption could be exercised by one or more of the other co-sharer tenants with respect to the 7/8th portion of the holding which had been acquired by stranger purchasers.

07. *Rai Nalinaksha Dutta Bahadur v. Kazi Abdul Jalil,* AIR 1936 Cal. 398.
08. *Mansuruddin Bhuiya v. Md. Yeakub Ali Dewn,* (1969) 21 DLR 565.
09. (1965) 18 DLR 572 : PLD 1967 Dhaka 600.
10. (1940) 44 CWN 981.

(2) Transfer by exchange or partition. Exchange and partition are not transfers within the meaning of section 23 and cannot therefore give rise to the right of pre-emption.

(3) Transfer by bequest or gift (including heba but excluding *heba-bil-ewaj* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor. But if the transfer is made by way of *heba-bil-ewaj* for a pecuniary consideration, pre-emption will lie, for such a transaction is practically a sale[11] and not a provision for near relations which is excepted for obvious reasons. *Heba-bil-ewaj* in consideration of a prayer-mat is not a pecuniary consideration and a transfer in such a case is not pre-emptable.[12] In the instant case transfer of property was made by way of gift by the sister to her brother and consideration was a prayer-mat. The Courts below have considered that it was a *heba-bil-ewaj* as there was consideration, namely the prayer-mat. But the High Court reversed the findings of the lower Courts and held that the legislature has excluded *heba-bil-ewaj* from the exception clause where the consideration is pecuniary consideration. The word 'pecuniary' means money or money above. Therefore the prayer-mat, however valuable it may be, is not a pecuniary consideration. In another case[13] Murshed D.J., observed :

"The *ewaz*, which literally means a *'quid pro quo'* or consideration, may be inadequate, but inadequacy of consideration is no ground for treating the transaction as void or illegal. It is a well-established practice, across centuries, amongst the Muslims of the sub-continent to transfer property by way of sale in the nature of *ewaz* and the *ewaz* or consideration is often either a copy of the Holy Quran and *Tasbith* (rosary) and/or *ja-e-namj* (prayer carpet) or some other property which has very little or no value at all. It is also occasionally for a consideration which is comparative of very small value."

11 . *Satyendra v. Fulsom*, (1932) 36 CWN 486 : 139 IC 403.
12 *Syed Ali Gazi v. Akhej Sardar*, (1968) 20 DLR 433.
13 . *Md. Azizul Bari v. Md. Ismail*, PLD 1968 Dhaka 120.

In the case of *Mst. Kanchanmala v. Renu Mian*,[14] a deed of transfer for love and affection combined with payment of money has been interpreted not as *heba-bil-ewaj* and such a transfer is not pre-emptable. In this case one Ali Akbar gifted away some of his properties, the subject-matter of the present litigation, to his daughter Mosammat Kanchanmala (petitioner) by executing a *heba-bil-ewaj* on the 7th of Baisakh, 1364 B.S., corresponding to 20th of April, 1957. It has been alleged by the opposite parties, the pre-emptors in a proceeding under section 26F of the Bengal Tenancy Act, that no notice of the gift by Ali Akbar in favour of his daughter was given to them and that subsequently, when they came to know of the same, they filed an application on the 8th of January, 1959, for pre-emption claiming to be co-sharers of the holding. The trial Court dismissed the said application but, on appeal by the applicants the lower Appellate Court allowed the appeal, set aside the judgement and order of the learned Munsif and granted the applicants' prayer for pre-emption. The petitioner moved the High Court in its revisional jurisdiction.

The question for determination was whether the gift made by Ali Akbar in favour of his daughter (petitioner) is liable to be pre-empted under section 26F of the Bengal Tenancy Act. The recital of the deed of gift by which Ali Akbar transferred the properties in dispute to his daughter goes to show that petitioner Kanchanmala was living in her father's house with her husband at the request of her father Ali Akbar. It further shows that the donee (Kanchanmala) is the first child of the donor (Ali Akbar) and the donor was satisfied by the affection and care bestowed upon him by her. It further appears that the donee gave Rs. 200 to the donor previously for his expenses to Mecca and that in considration of the same and also being satisfied with the nursing and care of the donee, he gifted away the properties in dispute to her for her maintenance.

14 . (1960) 12 DLR 479.

This goes to show that the gift by Ali Akbar in favour of his daughter was for consideration of Rs. 200 and also for the love, affection care bestowed upon him by her.

It was contended on behalf of the peritioner that thouh this *heba-bil-eewaj* is partly for a consideation of Rs. 200, yet it is not a *heba-bil-iwaz* which can be pre-empted under section 26F of the Bengal Tenancy Act. It was further contended that this *heba-bil-eweaj* is of a composite character, namely, it is partly for payment of Rs. 200 and partly for love, care and affiction bestowed upon the donor by the donee and, as such, it is not possible to assess how much for love, care and affection was gifted away and how much for Rs. 200. It was also contended that the *heba-bil-ewaj* that can be pre-empted under section 26F of the Bengal Tenancy Act must be in the nature of sale and not the *heba-bil-ewaj* as evidenced by the deed of gift. Finally it was argued that when Rs. 200 was given by the donee to the donor Ali Akbar, that was not given for consideration of the gift by Ali Akbar; rather, it was given by the donee of her own volition and without any consideration; and that, similarly, the love, affection and care bestwoed by the donee on the donor were free and without any consideration and, as such, though the document stated that the gift is a *heba-bil-ewaj* for a consideration of Rs. 200 and for love and affection shown to the donor, it is not such a *heba-bil-ewaj* which can be pre-empted under section 26F of the Bengal Tenancy Act.

It was held that the petitioner made a gift of Rs. 200 to his father, the donor, towards his passage expenses to Mecca without any consideration or *'ewaj.'* This was a gift-pure and simple. Similarly though in the document in question it is stated that the gift or *"ewaj"* is for the consideration of Rs.200 advanced to the donor by the donee and also for love and affection bestowed on him, it cannot be said that this gift or exchange being involved in the contract of gift as its direct consideration and, as such, this is not a *heba-bil-ewaj*, as contemplated under section 26F of the Bengal Tenancy Act and, as such, is not liable to be pre-empted under the said section.

The gift by Ali Akbar in favour of his daughter is of a composite character. The recitals in the document in question go to show that the gift was for a consideration of Taka. 200 advanced to the donor by the donee and also for love and affection bestowed upon him by the donee and for maintenance. Love and affection cannot be measured in money and, as such, it cannot be said that the gift in question is a *heba-bil-ewaj* wholly for consideration, though partly the gift or exchange is for Taka. 200. In the aforesaid circumstances, the gift in question is not a *heba-bil-ewaj*, as contemplated by section 26F of the Bengal Tenancy Act and, as such, it cannot be pre-empted.

A transfer in favour of sister's son, being relation by consanguinity within three degrees of the donor, canot be pre-empted.[15] The mode of reckoning of the degrees is to be found in section 28 of the Succession Act, 1925, which read with the First Schedule thereof, requires the reckoning or computation to be made by vertical movement upward or downward or upward and then downward agin, in the family tree. By this method of computation a full brother is in the second degree of consanguinity, between the brothers their father intervening; a first cousin is in the fourth degree of consanguinity, his father, garand-father and uncle intervening; and so a nephew is in the third degree of consanguinity, his father intervening between him and the uncle.

In a case[16] under section 26F of the Bengal Tenancy Act it was held that a transfer in favour of a stranger by *heba-bil-ewaj* for non-pecuniary consideration is not covered by section 26F of the Act. The facts of the case in brief are that the opposite parties, who are brothers, sisters and sister's heirs of one Taiyab Ali, and inherited shares in the property left by Altab Ali Fakir, made an application under section 26F of the Bengal Tenancy Act for pre-emption alleging that

15. *Sale Mohammad v. Mst. Ayesha Khatoon*, (1968) 20 DLR 376; *Tamizunnessa v. Umar Ali*, (1965) 18 DLR 572 : PLD 1967 Dhaka 600.
16. *Shafi Mia v. Hafizuddin Aymed*, (1957) 11 DLR 353.

certain shares in the lands in question were transferred by way of *heba-bil-ewaj* in consideration of a copy of the Holy Quran by the widow of the said Altab Ali Fakir, who was the original owner of the property, to her husband's sister's sons, i.e., Taiyab Ali's sons; that no notice of the transfer was served upon them although they are the co-sharers in the said property; and that the transferees, the present petitioners, were all strangers, and, therefore, the transfer by *heba-bill-ewaj* was liable to pre-emption.

The application was resisted by the transferees on the ground that the said transfer is covered by the exceptions contained in section 26F of the Bengal Tenancy Act.

The trial Court held that the case was covered by the exceptions mentioned in section 26F (1)(b), i.e., "a transfer by exchange, lease or partition", and therefore, dismissed the application for pre-emption.

On appeal, the learned Subordinate Judge held that the transfer in question was in favour of a stranger, and, therefore, although it was a *heba-bil-ewaj* for non-pecuniary consideration. It was not covered either by section 26F (1)(b) or even by section 26F(1)(c). Against this decision an application for revision has been filed. The learned Judges of the High Court affirmed the decision of the learned Subordinate Judge and discharged the Rule. In delivering the judgment of the Court Amin Ahmad, C.J. observed : "In our opinion, advisedly the Legislature has excluded the *heba-bil-ewaj* for pecuniary consideration from the exceptions. As its consideration is simply pecuniary, it is a sale, pure and simple, and it is quite different from a *heba-bil-ewaj* in favour of near relations for non-pecuniary consideration like the exchange of the Quran, etc. This latter kind of *heba*, though not stated in so many words, there is no doubt, is included by implication in the exception contained in clause (c), and not included in clause (b) under the category of "exchage"; otherwise, in spite of provisions of clause (b), the Legislature would not have used in clause (c) the words "including *heba* but excluding *heba-bil-ewaj* for any pecuniary consideration." These words have their meaning and cannot be ignored. It seems that it was the intention of the legislature to exclude this kind of *heba* from the scope of section 26F for pre-emption, for, they wanted such *heba* to take effect like family settlements without giving any right to donor's co-tenants to defeat it by claiming pre-emption, and, therefore, this privilege or exemption from pre-emption is allowed only when the donee is husband or wife or consanguinous relation within three degrees."

Explanation to section 24(11) states that a relation by consanguinity shall, for the purposes of this sub-section, include a son adopted under the Hindu law.

(4) Transfer by way of *wakf*. It must be valid under the provisions of the Muslim law.

(5) *Debuttor* or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual e.g. a public charitable trust.

Difference between section 24 of the Non-Agricultural Tenancy Act, 1949 and section 96 of the State Acquisition and Tenancy Act, 1950 :—

(1) Section 24 of the Non-agricultural Tenancy Act applies in respect of non-agricultural lands, while section 96 of the State Acquisition and Tenancy Act applies in respect of agricultural lands.[17]

(2) Under section 24 a contiguous owner cannot claim a right of pre-emption,[17] whereas under section 96 a contiguous owner can exercise the right of pre-emption.

(3) Section 24(2) requires that an application for pre-emption must be accompanied by a deposit of the consideration money of the property transferred as stated in the notice under section 23 together with compensation at the rate of five *per centum* thereon; whereas section 96(3)(a) requires the deposit of the consideration money of the property transferred as stated in the notice under section 89 together with compensation at the rate of ten *per centum* thereon.

17. *Abdul Khaleque v. Jadav Chandra Mali*, (1968) 20 DLR 562 : PLD 1970 Dhaka 10.

(4) Section 24(3) requires the applicant or applicants to deposit such amount as the transferee has paid or spent(1) in respect of rent for the period after the date of transfer or (2) in annulling encumbrances on the property, and (3) in erecting any building or structure between the date of the transfer and the date of service of the notice of the application or (4) in making any other improvement in the property transferred together with interest at the rate of six and a quarter *per centum per annum* from the date on which the transferee made such payment. Under section 96(3)(b) the applicant or applicants will be required to deposit further sum paid or expenses incurred by the transferee on three accounts, mainly, (1) in respect of rent, (2) in annulling encumbrances, (3) for making improvements in respect of the property trransferred. But they need not pay any interest thereon.

(5) Under the proviso to section 24(3) the applicant can challenge the correctness of any amount claimed to have been paid or spent by the transferee on any such account mentioned above. But there is no such provision in section 96 to challenge the correctness of any amount claimed to have been paid by the transferee on any such account mentioned above.

(6) Section 24(4) gives the remaining co-sharer tenants including the transferee, if one of them, an opportunity to join as co-applicants in the pre-emption proceeding within the period of four months referred to in sub-section (1) or within one month of the service of notice of the application, whichever is later. But under section 96(4) the remaining co-sharer tenants including the transferee, if one of them, are allowed to join within the period of four months referred to in sub-section (1) or within two months of the service of notice of the application, whichever is earlier.

(7) Section 24(7) lays down that in making an order allowing the application for pre-emption in favour of more than one co-sherer tenant, the Court may apportion the property transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration. The Court shall so apportion the said property on the request of any applicant. But under section 96(7)(a) the Court must apportion the property transferred among the applicants in such manner as it deems equitable. The expression "after taking existing possession into consideration" is not there in section 96(7)(a).

25. Saving as to statements in instruments of transfer where landlord is not a party.— Notwithstanding anything contained in the [Evidence Act][18] 1872, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenancy referred to in such instrument.

26. Intrpretation—(1) In this Chapter "transferee", "purchaser" and "mortgagee" include their successors-in-interest.

(2) In section 23,—

(*a*) "transfer" does not include partition [***][19] or until, a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale;

(*b*) "transferor" includes a person whose interest in any non-agricultural land or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section(3) of that section.

26A.[20] Bar to sub-let.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, no non-agricultural tenant shall sub-

18. The words "Evidence Act" were substituted for the words "Indian Evidence Act" by E.P. Ordinance XXVIII of 1960.
19. The words "or a sub. lease" were omitted by E.P. Ord. IX of 1967.
20. Section 26A was inserted after section 26 by E.P. Ord. IX of 1967.

let the whole or any part of his tenancy on any terms or conditons whatsoever.

(2) If any tenancy or any part of a tenancy is sub-let, in contravention of the provision of sub-section (1), the interest of the non-agricultural tenant in the tenancy or in that part of the tenancy, as the case may be, shall be extinguished, and the tenancy or the part of the tenancy shall vest in the Government from the date of such sub-letting free from all encumbrances.

CHAPTER -VI

Record-of-rights and settlement of rents.

Chapters VI and VII were omitted by E.P. Ord. IX of 1967. These Chapters run thus :-

27. Power to order survey and preparation of record-of-rights.—The Government may in any case and in particular, in any of the cases specified in sub-section (2) of section 101 of the Bengal Tenancy Act, 1885, if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer in respect of all non-agricultural lands in any local area, estate or tenure or part thereof whether or no, the said Act extends to such area, estate, tenure or part.

28. Applicability of the provisions of Chapter X of the Bengal Tenancy Act, 1885.—When an order under section 27 has been made,-

(a) the particulars to be recorded shall be specified in the order and may include, either without or in addition to other particulars, any of those particulars specified in section 102 of the Bengal Tenancy Act, 1885.

(b) subject to any rules made under this Act, all the provisions of Chapter X of the Bengal Tenancy Act, 1885, and the rules made thereunder shall in so far as they are not inconsistent with the provisions of this Act, apply as if such order is an order made under section 101 of the said Act in respect of lands used for purposes connected with agriculture or horticulture.

29. Order for estimate of fair and equitable rents of non-agricultural lands and preparation of a settlement rent-roll.—When an order has been made under section 27 in respect of any local area, estate or tenure or part thereof of which a settlement of land revenue is being or is about to be made, the Government may make an order directing the Revenue-officer, after recording under section 28 those particulars which are relevant and after publication of the draft of the record-of-rights—

(a) to estimate fair and equitable rents for non-agricultural tenants of every class in accordance with the provisions of this Act, and

(b) to estimate the rental value for all or any non-agricultural lands which are held *khas* by a landlord, in such local area, estate or tenure or part thereof, and then to prepare in the prescribed from and manner a settlement rent-roll in

which the rents and rental values so estimated together with such other particulars as may be prescribed shall be specified.

30. Procedure where both non-agricultural and other lands are concerned,—Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an order has been made under section 29 directing a Revenue-officer to prepare a settlement rent-roll in respect of non-agricultural lands in any local area, estate or tenure or part thereof,—

(a) the rents of such non-agricultural lands shall not be settled under Part II of Chapter X of the said Act; and

(b) where any of such non-agricultural lands are comprised in a tenancy which includes lands other than non-agricultural lands, the Revenue-officer shall—

(i) divide the tenancy so as to constitute separate tenancies for the non-agricultural lands and the other lands;

(ii) apportion the existing rent between the tenancies so constituted; and

(iii) estimate fair and equitable rents for the non-agricultural lands in accordance with the provisions of this Act.

31. Publication of settlement rent-roll, hearing of objections and confirmation.—(1) When an order has been made under section 29 for the preparation of a settlement rent-roll the Revenue-officer shall prepare such rent roll in accordance with the provisions of this Chapter and shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of such publication and shall dispose of such objections according to such rules as the Government may make.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a settlement rent-roll is submitted to the confirming authority under section 32, revise any entry, therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

32. Final revision of settlement rent-roll and its confirmation by prescribed Revenue authority.—(1) When all objections have been disposed of under section 31, the Revenue-officer shall

submit the settlement rent-roll to the prescribed Revenue authority for confirmation with a full statement of the grounds for his proposals and a summary of the objections (if any) which he has received.

(2) Such authority may confirm the settlement rent-roll with or without amendment or may return it for revision:

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the date of confirmation to be published in the prescribed manner and thereafter the settlement rent-roll shall be open to inspection at such place and times as may be prescribed.

33. Appeals.—(1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may appeal to the prescribed Revenue authority and from the decision of such authority to the Board of Revenue in the manner and within the period prescribed in this behalf.

(2) No Civil Court shall annul or alter any decision of a Revenue-officer, a Revenue authority or the Board of Revenue under section 30 or section 31 section 32 or sub-section (1) of this section except as provided in section 34.

34. Suits.—(1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit shall be instituted within six months from the date of confirmation of the settlement rent-roll or from the date of the certificate of final publication of the record-of-rights, whichever is later, or, if an appeal has been presented under section 33 within three months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds and on no other ground, namely:—

(a) that the land is not liable to the payment of rent;

(b) that the land although entered in the record-of-rights as being held rent-free is liable to the payment of rent;

(c) that the relation of landlord and tenant does not exist;

(d) that in the record-of-rights the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of any estate or tenancy;

(e) that in the record-of-rights there has been any omission of an undertenant or such under-tenant has been wrongly recorded as holding the land rent-free;

(f) that in the record-of-rights the special conditions and incidents of the tenancy have not been recorded or have been wrongly recorded;

(g) that in the record-of-rights any right of way or other casement attached to the land has not been recorded or has been wrongly recorded;

(h) that the land has been wrongly recorded in the settlement rent-roll as non-agricultural land; and

(i) that there has been an omission to estimate fair and equitable rents in respect of any land under this Act.

(4) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector.

35. Notification of order under section 27 or section 29 to be conclusive evidence.—A notification in the Official Gazette of an order under secition 27 or of an order under section 29 shall be conclusive evidence that the order has been duly made.

36. Presumption of rents settled under sections 30 to 33.— Subject to the provisions of section 34 all rents entered in settlement rent-roll confirmed under section 32 or settled under section 33 shall be deemed to have been correctly settled and to be fair and equitable rent within the meaning of this Act.

37. Correction of settlement rent-roll.—The Revenue -officer may at any time correct any *bona fide* clerical mistake in or omission from the settlement rent-roll and shall make such alternations in the same as may be necessary to give effect to any decision under sub-section (1) of section 33 or section 34.

38. Settlement of rents in respect of non-agricultural lands by Revenue-officers in the case where a settlement of land revenue is not being or is not about to be made.—Where an order has been made under section 27 for the preparation of a record-of-rights in respect of all non-agricultural lands in any local area, estate or tenure or part thereo of which a settlement of land revenue is not being made or is not about to be made, the Revenue-officer shall, in settling the rents of such non-agricultural lands under sections 105 and 105 A of the Bengal Tenancy Act, 1885 have regard to the provisions of this Act as to the determination of a fair and equitable rent and to such rules as may be made in this behalf under this Act.

39. Stay of proceedings in Civil Court during preparation of record-of-rights under section 27.—When an order has been made under section 27 directing the preparation of a record-of-rights, then, subject to the provisions of section 34, a Civil Court shall not,—

(a) Where a settlement of land revenue is being or is about to be made— until after the final publication of the record-of-rights, and

(b) where a settlement of land revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights.

entertain any suit or application for the alternation of the rent or the determination of the status of any non-agricultural tenant in the area to which the record-or-rights applies.

40. Date from which settled rents take effect.—When a rent is settled by a Revenue-officer under this Chapter or under Chapter X of the Bengal Tenancy Act, 1885, after an order under section 27 has been made, such rent shall take effect from such date as may be fixed by the Revenue-officer.

41. Period for which rents as settled are to remain unaltered.—(1) When the rent of the non-agricultural land comprised in a tenancy is settled under this Chapter or under Chapter X of the Bengal Tenancy Act, 1885, after an order under section 27 has been made, it shall not, except on the ground of a landlord's improvement or of a subsequent alternation in the area of such land, be enhanced, in the case where such land is held by a tenant or by an under-tenant having under section 22 the rights and liabilities of a tenant, for fifteen years, and in the case where such land is held by an under-tenant having no such right and liabilities, for five years; and no such rent shall be reduced within the period aforesaid save on the ground of alteration in the area of the non-agricultural land comprised within the tenancy.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

42. Interpretation.— In this Chapter—

(a) "Revenue-Officer, includes any officer whom the Government may appoint to discharge all or any of the functions of a Revenue-Officer under that Chapter;

(b) the term "settlement of land-revenue" includes a settlement of rent in an estate or tenure which belong to the State.

CHAPTER -VII

General provisions as to rent of non-agricultural tenancies.

Payment of rent

43. Rent to be paid yearly— Subject to agreement, a money-rent payable by a non-agricultural tenant shall be paid yearly according to the Bengali year and shall fall due on the last day of the Bengali year in respect of which it is paid.

44. Time and place for payment of rent.—(1) Every non-agricultural tenant shall pay or tender the yearly rent before sunset of the day on which it falls due :

Provided that the non-agricultural tenant may pay or tender the rent payable for the year at any time during the yar before it falls due :

Provided that the non-agricultural tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment for tender of rent may be made—

(i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord : or

(ii) by postal money order in the manner prescribed.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 51.

(3) Where rent is went by postal money order in the manner prescribed, the Court may presume until the contary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form.

(5) Any yearly rent or part of any yearly rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

45. Appropriation of payments.—(1) When a non-agricultural tenant makes a payment on account of rent, he may declare the year or years in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year or years as the landlord thinks fit.

Receipts and Accounts

46. Non-agricultural tenant making payment to his landlord entitled to a receipt.—(1) Every non-agricultural tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for such payment either from such landlord, or, where the agent of such landlord has been authorised in writing by such landlord to issue and sign such receipts on behalf of such landlord, from such agent.

(2) The landlord or such agent, as the case may be, shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall be in such form and shall specify such particulars as may be prescribed either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

47. Non-agricultural tenant entitled to full discharge or statement of account at close of year.—(1) Where a landlord admits that all rent payable by a non-agricultural tenant to the end of the Bengali year has been paid, the non-agricultural tenant shall be entitled to receive free of charge, within three months after the end of the year a receipt in full discharge of all rent falling due to the end of the year either from the landlord, or, where the agent of such landlord has been authorised in writing to issue and sign such receipts on behalf of such landlord, from such agent.

(2) Where the landlord does not so admit, the non-agricultural tenant shall be entitled, on paying a fee of four annas to receive, within three months after the end of the year, a statement of account in such form and specifying such particulars as may be prescribed either generally or for any particular local area or class of cases.

(3) The landlord or such agent, as the case may be, shall prepare and retain a copy of the Statment containing similar particulars.

48. Penalties and fine for withholding receipts and statements of account and failing to keep counterfoils.—(1) If a landord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant a receipt in accordance with the provisions of section 46 for any rent paid by the non-agricultural tenant, such tenant may, within three months from the date of payment, institute a suit to recover from such landlord or

agent, as the case may be, such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant demanding the same either the receipt in full discharge, or, if the non-agricultural tenant is not entitled to such a receipt, the statement of account, for any year required by section 47, such tenant may, within the next ensuing Bengali year, institute a suit to recover from such landlord or agent, as the case may be, such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by such tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the non-agricultural tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty-rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-Officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the non-agricultural tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the non-agricultural tenant to pay to such landlord or agent such compensation not exceding fifty rupees, as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under the sub-section (3) or awarding compensation under sub-section (5); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section the Collector shall have power to summon and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908.

(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent; or

(b) the statement of account required by section 47, and the refusal of the non-agricultural tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 46.

49. Government to prepare forms of receipt and account—(1) The Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices froms of receipts with counterfoils and of statements of accounts suitable for use under section 46 and 47.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Government think fit.

50. Effect of receipt by registered proprietor, manager or mortgagee— Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager, or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent; and the non-agricultural tenant liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person :

Provided that nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent

51. Application to deposit rent in Court.—(1) In any of the following cases, namely :—

(a) when a non-agricultural tenant tenders money on account of rent the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a non-agricultural tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous

occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him receipt for it;

(c) when the rent is payable to co-shares jointly and the non-agricultural tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or

(d) when the non-agricultural tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;

the non-agricultural tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenancy an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(2) The application shall—

(a) contain a statement of the grounds on which it is made;

(b) state—

(i) in the cases referred to in clauses *(a)* and *(b)* of sub-section (1) the name of the person to whose credit the deposit is to be entered;

(ii) in the case referred to in clause *(c)* of that sub-section, the names of the co-sharers to whom the rent is due, or of so many of them as the non-agricultural tenant may be able to specify; and

(iii) in the case referred to in clause (d) of that sub-section, the names of the persons to whom the rent was last paid and of the person or persons now claiming it;

(c) be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Proceudre 1908, by the non-agricultural tenant, or where he is not personally cognizant of the facts of the case, by some person so cognizant; and

(d) be accompanied, in the case referred to in clauses *(a)* and *(b)* of sub-section (1) by the prescribed cost of transmission of the money deposited to the landlord and in the cases referred to in clauses *(c)* and *(d)* of that sub-section by a fee of the prescribed amount.

52. Receipt granted by Court for rent deposited to be a valid acquittance.—(1) If it appears to the Court to which an application is made under section 51 that the applicant is entitled under that section to deposit the rent, it shall received the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the non-agricultural teant and deposited as aforesaid in the same manner and to the same extent as if that amount of rent had been received—

(a) in the cases referred to in clauses *(a)* and *(b)* of sub-section (1) of section 51 by the person specified in the application as the person to whose credit the deposit was to be entered;

(b) in the case referred to in clause *(c)* of that sub-section by the co-sharers to whom the rent is due; and

(c) in the case referred to in clause *(d)* of that sub-section, by the person entitled to the rent.

53. Procedure for payment to the landlord of rent deposited.—The court receiving a deposit—

(i) in the case referred to in clause *(a)* or in clause *(b)* of sub-section (1) of section 51 shall forthwith forward the same by postal money-order to the address of the landlord, and

(ii) in the case referred to in clause *(c)* or in clause *(d)* of that sub-section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and if the amount of the deposit is not paid away under section 54 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in the case referred to in clause *(c)* of that sub-section cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and in some conspicuous place in the village or town in which the non-agricultural land comprised within the tenancy or any portion thereof is situated, and in the case referred to in clause *(d)* of that sub-section cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

54. Payment for refund of deposit.—(1) The Court may pay the amount of the deposit notified under section 53 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under clause *(i)* of section 53 or under sub-section (1) before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to

the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(3) No suit or other proceeding shall be instituted against the Government or against any officer of the Government in respect of anything done by a Court receiving a deposit under section 52 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Penalty for refusing to receive rent.

55. Penalty for refusing to receive rent tendered by postal money-order or deposited.— If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering, by suit, interest, costs, or damages in respect of the same, and the Court may in addition award to the non-agricultural tenant damages not exceeding twelve and a half *per centum* in the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent of or the area of the land comprised in the tenancy shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited, or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars setforth in the application for permission to deposit or in the postal money-order form.

Arrears of rent.

56. Liability to sale for arrears.—A non-agricultural tenant shall not be liable to ejectment for arrears of rent, but this tenancy shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

57. Interest on arrears.—(1) An arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of the Bengali year in which the rent falls due to the date of payment or of the institution of the suit, whichever date is earlier.

(2) Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall affect the provisions of sub-section(1) relating to interest payable on arrears of rent.

58. Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.—(1) If, in any suit brought for the recovery of arrears of rent, it apears to the Court that the defendant has, without reasonable or probable cause, neglect or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twelve and a half *per centum* on the amount of rent decreed, as it thinks fit :

Provided that interest shall not be decreed when damages are awarded under this section :

Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

58A. Recovery of arrears of rent–(1) Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force or in any contract the landlord shall be entitled to recover arrears of rent from the non-agricultural tenant from the year 1940 until the commencement of the Act, provided the suit be instituted for the recovery of the same within a year from the commencement of the Act.

(2) The Court shall have the right to grant instalment for payment the period of which shall in no case exceed 5 years.

Liability of rent on change of landlord or after transfer of tenancy.

59. Non-agricultural tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.—(1) A non-agricultural tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice in writing of the transfer to the non-agricultural tenant.

(2) Where there is more than one non-agricultural tenant paying rent to the landlord whose interest is transferred, a general notice

from the transferee to the non-agricultural tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

60. Liability for rent before tansfer of tenancies.—When a non-agricultural tenant transfers his tenancy in whole or in part, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer :

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

Illegal impositions

61. Abwab, etc., illegal.—All impositions upon non-agricultural tenants under the denomination of *abwab, mathat*, or other like appellations, in addition to the actual rent, shall be illegal and all stipulations and reservations for the payment of such impositons shall be void.

62. Fine for realisation of abwab, etc.—(1) If a landlord or his agent realises from a non-agricultural tenant any imposition declared under section 61 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine to be imposed in the same manner, as in sub-section (3) of section 48, and the provisions of sub-section (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 63.

63. Penalty for exaction by landlord from non-agricultural tenant of sum in excess of the rent payable— Every non-agricultural tenant from whom, except under any special enactment for the time being in force, any sum of money is exacted by his landlord in excess of the rent or interest lawfully payable, may within six months from the date of the exaction, institute a suit to recover from the landlord, in additon to the amount so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount so exacted exceeds two hundred rupees, not exceeding double that amount.

CHAPTER -VIII

Improvements

64. Definition of "Improvement" — For the purpose of this Act the term "improvements" used with reference to a tenancy shall mean any work which adds to the value of the non-agricultural land comprised in the tenancy, which is suitable to such land and consistent with any of the purposes specified in section 4 for which it is being used and which, if not executed on such land, is either executed directly for its benefit, or is, after execution, made directly beneficial to it, and subject to the foregoing provisions, shall include the following, namely :-

(a) laying out of passages or roads,

(b) providing open spaces for ventilation,

(c) providing facilities for taking water,

(d) laying out drainage connections,

but shall not include any work executed by a non-agricultural tenant if it substantially diminishes the value of his landlord's property.

65. Rights to make improvements.—(1) Subject to the provisions of sub-section (2) neither the non-agricultural tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the tenancy.

(2) If both the non-agricultural tenant and his landlord wish to make the same improvement the non-agricultural tenant shall have the prior right to make, it, unless it affects another tenancy or other tenancies under the same landlord.

(3) Omitted.[1]

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1. Sub-section (3) of sction 65 was omitted by E. P. Ord. IX of 1967. This sub-section runs thus:

(3). Any fee realised from non-agricultural tenant for permission to make any improvement in respect of his tenancy shall be deemed to be an *abwab* and the provisions of section 61 shall apply thereto."

66. Collector to decide question as to right to make improvement, etc.—(1) If a question arises between the non-agricultural tenant and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, the [Deputy Commissioner][2] may, on the application of either party, decide the question.

(2) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the District Judge from every order passed by the [Deputy Commissioner][2] under sub-section (1) and the order passed by the District Judge on such appeal shall be final.

67. (Omitted).[3]

68. Application to record evidence as to improvement.—(1) If any non-agricultural tenant holding any non-agricultural land [***][4] desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the [prescribed][5] Revenue Officer [* * *][4] and such Revenue-officer shall thereupon, at a time and a place of which notice shall be given to the parties, record the evidence :

Provided that such Revenue-officer shall not so record the evidence if he considers that there were no reasonable grounds for the making of the application, or if it appears to him that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and the non-agricultural tenant or any persons claiming under them.

Note :—Section 64 defines "improvements" to mean any work which adds to the value of the non-agricultural land comprised in the tenancy which is suitable to such land and consistent with any of the purposes specified in section 4. The work, if not executed on such land, may be executed directly for its benefit or after execution it is made directly beneficial to it. To explain more clearly, the improvement work need not necessarily be made on the land of the tenancy. If a road a drainage be made on the land of the tenancy. If a road or drainage be made on the nearby land or if facilities are made for taking water all these works are improvements of the tenancy even though the land of the tenancy is not touched at all. The following work may be said to be improvements :- *(a)* laying out of passages or roads, *(b)* providing open spaces for ventilation, *(c)* providing facilities for taking water, *(d)* laying out drainange connections. But a non-agricultural tenant cannot execute any work if it substantially diminishes the value of the landlord's property.

Under section 65 both the landlord and the non-agricultural tenant have the right to make improvements on land. Neither of them could prevent the other from making an improvement in respect of the tenancy. When both the landlord and the non-agricultural tenant wish to make the

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2. The words "Deputy Commissioner" were substituted for the word "Collector," by E.P. Ord. IX of 1967.
3. Section 67 was omitted by E.P. Ord. IX of 1967. This section provides: "67. *Registration of landlord's improvements.*—(1) A landlord may, by application to such Revenue-officer as the Government may appoint in this behalf, register any improvement which he has lawfully made or which has been lawfully made wholly or partly at his expense or which he has assisted a non-agricultural tenant in making.

   (2) Every such application shall be in the prescribed form and shall contain such particulars and shall be verified in such manner, by local enquiry or otherwise, as may be prescribed.

   (3) The Revenue-officer receiving the application may reject it if it has not been made within twelve months,—

   (a) in the case of improvements made before the commencement of this Act, from the commencement of this Act; and

   (b) in the case of improvements made after the commencement of this Act, from the date of the completion of the work."
4. The words "or his landlord" and "to whom an application for the registration of such improvement may be made under sub-section (1) of section 67" were omitted respectively by E. P. Ord. IX of 1967.
5. The word "prescribed" was inserted after the words "apply to the," *ibid.*

same improvement the non-agricultural tenant shall have the prior right to make it, unless if affects another tenancy or other tenancies under the same landlord.

Under section 66 both the landlord and the tenant may submit application to the Deputy Commissioner to have a decision on the point whether the landlord or the tenant has the right to make an improvement or whether a particular work is an improvement. The aggrieved party may prefer an appeal within thirty days from the date of the order of the Deputy Commissioner to the District Judge and his order shall be final.

Under section 68 if any non-agricultural tenant desires that the evidence relating to any improvement of the land be recorded, he may apply to the Revenue-Officer who will record the evidence. But he will not record the evidence if he considrers that there is no reasonbale ground fro making the application, or if it appears to him that the subject matter is under inquiry in a Civil Court. When any matter is recorded under this section, the record shall be admissible in evidence in any subsequent proceeding betweeen the landlord and the tenant or any persons claiming under them.

The officer who records evidence under sub-section (1) of section 68 of the Act shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII of the Code of Civil Procedure, 1908.[6]

6. Rule 20 of the East Bengal Non-Agricultural Tenancy Rules, 1950.

CHAPTER -IX

Other incidents of non-agricultural tenancies.

69. (Omitted).[1]

70. No ejectment except in execution of decree.— No non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a dcree of a competent Civil Court.

71. Application of the Transfer of Property Act, 1882, or other law.—The provisions of the Transfer of Property Act, 1882, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act shall continue to apply to all tenancies to which the provisions of this Act apply.

Chapter -X (Omitted.)[2]

1. Section 69 was omitted by E.P.Ord. IX of 1967. This section provided as follows :-
"**69. Eviction of non-agricultural tenants, holding tenancies conditional upon employment in industrial concern.**—Where a tenancy is held by a non-agricultural tenant subject to the condition of employment in any industrial concern, such tenant shall, notwithstanding anything elsewhere contained in this Act, be liable to be ejected from the land comprised in such tenancy on the termination of such employment."
2. Chapter X dealing with conversion of agricultural lands into non-agricultural tenancies was omitted by E.P. Ord. IX of 1967. This chapter contains s.72 which provides:

CHAPTER -XI

Judicial Procedure

72 & 74 (Omitted).[3]

3. **"72 Conversion of agricultural lands into non-agricultural tenancies in certaimn cases.**—(1) A tenant holding any land not being non-agricultural land which is situated within any area to which this Act extends or his landlord, may apply to the Deputy Commissioner for the conversion of such land into a tenancy to which the provisions of this Act apply, and, on receipt of such application, the Deputy Commissioner shall, by order in writing, direct such conversion subject to payment of such rent not exceeding twice the rent fro the time being payable for such land, as the Deputy Commissioner may fix :

Provided that no landlord shall be entitled to apply under this sub-section except in the case where such land is being used by the tenant by whom it is held for any purpose not connected with agriculture or horticulture without the express or implied consent of the landlord :

Provided further that no order under this sub-section shall be passed without notice, the prescribed process-fee for which shall accompany the application,—

(i) in the case where such application is made by a tenant, to the landlord or the entire body of landlords and to the co-sharer tenants, if any, and

(ii) in the case where such application is made by a landlord, to the co-sharer landlords, if any, and to the tenant or if there be more than one tenant to all such tenants.

(2) Every order passed under sub-section (1) directing the conversion of any land which is not non-agricultural land into tenancy to which the provisions of this Act apply shall state the date from which such conversion shall have effect and shall specify the rent which shall be payable in respect of the tenancy into which such land is converted and the rent so specified shall not be enhanced during a period of not less than fifteen years from the date of such order.

(3) An appeal shall lie to the Commissioner of the Division from any order of the Deputy Commissioner under this section if it is presented within thirty days from the date of such order and is accompanied by the prescribed fee and the decision of the Commissioner on such appeal shall be final.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any land which is not non-agricultural land is converted into a tenancy to which the provisions of the Act apply by an order under this section such land shall with effect from the date on which such conversion takes effect become non-agricultural land and the non-agricultural tenant of such land shall for the purposes of this Act be deemed to have held it as such a tenancy with effect from the date on which such tenant or his predecessor-in-interest was first inducted into the land:

Provided that if such tenant acquired a right of occupancy in such land under the provisions of the Bengal Tenancy Act, 1885, or the Sylhet Tenancy Act, 1936, before such conversion, the tenancy comprising such land after such conversion shall, nothwithstanding anything contained elsewhere in this Act, be deemed to be a tenancy to which the provisions of section 7 apply.

3. Section 73 and 74 were omitted by E. P. Ord. IX of 1967. These sections provide as follows :

"73. Regard to be had by Civil Courts to entries in record-of-rights.—In all areas for which a record-of-rights has been prepared in pursuance of an order made under section 27 and finally published, a Civil Court shall, in all suits between landlord and non-agricultural tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

74. Execution of decrees for arrears of rent by assigness of such decrees.—Notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, an application for the execution of a decree for arrears in respect of any non-agricultural land obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the non-agricultural land has become and is vested in him.

75. Relief against forfeitures in certain cases.—A suit for the ejectment of a non-agricultural tenant, on the ground that he has used the non-agricultural land in a manner which renders it unfit for use for any of the purposes specified in section 4, shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant—

(i) specifying the particular misuse complained of, and

(ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,

and the tenant has, where the misuse is capable of remedy, failed within a reasonable time from the date of the service of the notice to remedy the misuse.

Note :—Section 75 governs sections 7 and 9 of this Act. Section 7(1) provides that the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4. Similarly, section 9(1)(i) provides that the tenant of certain tenancies as mentioned in the section may be ejected on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4. Section 70 lays down that even if the non-agricultural tenant is liable to be ejected on the ground of misuse under any of the said sections, the landlord is not entitled to eject the tenant without obtaining a decree of a competent civil Court in a suit brought for the purpose. Section 75 lays down a condition precedent to the institution of a suit for ejectment that landlord should serve on the tenant before filing such a suit, a notice, specifying the particular misuse and where the misuse is capable of remedy, requiring the tenant to remedy the same. The object of the notice under this section is to give the tenant an opportunity of avoiding ejectment by remedying the misuse if that is possible. If the tenant fails to comply with the demand within a reasonable time, the landlord can bring a suit for ejectment. If the condition precedent is not complied

with, the suit for ejectment cannot be entertained by the Court.

In cases where misuse is not capable of remedy, all that the law requires is that a written notice should be given by the landlord for determination of the tenancy.

76. (Omitted).[4]

77. Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant.—Where a non-agricultural tenant or his predecessor-in-interest has erected any structure on any non-agricultural land held by such tenant and such land is sold in execution [. . .][5] of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall be entitled to obtain delivery of possession of the land sold by the removal of such structure :

Provided that the judgment-debtor shall be allowed reasonable time by the Court to remove such structure from the property sold before the possession of such property is delivered to the purchasers :

Provided further that it shall be open to the purchaser to obtain possession of such land together with such structure on payment of such compensation for the value of such structure to the judgment-debtor as may be agreed upon bteween the

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4. S. 76 was omitted by E.P. Ord. IX of 1967. This section runs thus :-
"**76. Protection of the interest of an under-tenant having the rights and liabilities of a tenant in case of sale for arrears of rent.**—Where the interest of a non-agricultural tenant in any non-agricultural land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall take free from all encumbrances which may have been created by such non-agricultural tenant or his predecessor in interest and is subsisting immediately before the purchase takes effect, but subject to the interest of any under-teant having under-section 22 the rights and liabilities of a tenant."
5. The words "of a decree or" were omitted by E.P. Ord. IX of 1967.

purchaser and the judgment-debtor or, in the cse where they do not agree, as may be determined by the Court on application by the purchaser, and, on payment of such compensation, the interest of the judgment-debtor in such structure shall vest absolutely in the purchaser.

78—84. (Omitted).[6]

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6. Sections 78, 79, 80, 81, 82, 83 and 84 were omitted by E.P.Ord. IX of 1967. These sections provide as follows :-

"**78. Purchase of non-agricultural tenancy in execution of a decre for arrears of rent to take effect from the date of confirmation of the sale.**—Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever the interest of any non-agricultural tenant in any non-agricultural land is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

79. Rules for disposal of sale-proceeds.—(1) In disposing of the proceeds of a sale of the interest of a non-agricultural tenant in any non-agricultural land in execution of a decree for arrears of rent the following rules instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say—

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale;

(b) there shall, in the next place, be paid to the decreeholder the amount due to him under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid to the dcecree-holder therefrom the costs of application made under this section and any rent which may have fallen due to him in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale be paid to the judgment-debtor upon his application unless the Court, for reasons to be recorded in writing, otherwise directs.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), the Court shall determine the dispute, and the determination shall have the force of a decree.

80. Release from attachment of non-agricultural tenancies on payment into Court of the amount of decree or on confession of satisfaction by the decree-holder.—(1) The provisions of rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to the interest of any non-agricultural tenant in any non-agricultural land attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of the interest of any non-agricultural tenant in any non-agricultural land in execution of such a decree has been made, the interest of such non-agricultural tenant in such land shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree including the costs decreed together with the costs incurred in bringing such interest to sale is paid into Court, or the decree-holder makes an application for the release of such interest from such attachment on the ground that the decree has been satififed out of Court.

(3) The judgment-debtor or any person whose interests are affected by the sale may pay money into Court under this section.

81. Amount paid into Court to prevent sale to be a mortgage debt on the tenancy in certain cases.—(1) When any person whose interests are affected by the sale of a tenancy of a non-agricultural tenant advertised for sale in execution of a decree for arrears of rent due in respect thereof or in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913, pays into the Court the amount requisite to prevent the sale—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter *per centum per annum* and secured by a mortgage of such tenancy to him;

(b) his mortgage shall take priority over every other charge on such tenancy other than a charge for arrears of rent; and

(c) he shall be entitled to possession of the tenancy as mortgagee of the non-agricultural tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

82. Inferior tenant paying into Court may deduct from rent.—When a tenancy to which the provisions of this Act apply is advertised for sale—

(a) in execution of a decree for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting, or

(b) in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting or

when such sale is set aside under rule 89 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, and an inferior non-agricultural tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior non-agricultural tenant may in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediatate landlord, and that landlord, if he is not the defaulter may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

83. Decree-holder may bid at sale, judgment-debtor may not.—(1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree for arrears of rent in respect of a tenancy of a non-agricultural tenant in execution of which such tenancy is sold may, without the permission of the Court, bid for or purchase the tenancy.

(2) The judgment-debtor shall not bid for or purchase a tenancy so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenancy so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the cost of the application and order and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

84. Meaning of "arrears" and "arrears of rent".—For the purpose of this chapter the terms "arrears" and "arrears of rent" shall be deemed to include interest decreed under section 57 or damages awarded in lieu of interest under sub-section (1) of section 58.

CHAPTER –XII

Miscellaneous

85. Bar to application of Act to certain lands and to certain cases.—(1) Nothing in this Act shall apply to —

(a) any land vested in, or in the possession of —

(i) a port authority of a port, or

(ii) a railway administration, or

(iii) any local authority, or

(b) any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land, or

(c) any land acquired under the land Acquisition Act, 1894, or under any other law, for the use of any Department of the Government, or

(d) any other land in the possession of the Government, or

(e) any land held unde a public *wakf* or a trust for public purpose.

(2) Nothing in this Act shall apply to any non-agricultural land held by a tenant under the Government:

Provided that the right vested in a a tenant by the provisions of this Act shall not be divested by the acquisition of the superior right only in the land by the Government.

Note :—Section 85 gives a description of the land to which the Act does not apply. Under sub-section (1) the East Bengal Non-Agricultural Tenancy Act, 1949 has no application in respect of any land vested in or in the possession of a Port authority, Railway administration or a Local authority. Nor does it apply in case of any land required by the Government under the Land Acquisition Act, or under any other law. There is also another classification of land with regard to which the Act has no application. One such class of land is "any other land in the possession of the Government" as described under section 85(1)(d) of the Act. Section 85(1)(d) applies only to land other than that which comes within the meaning of the other

provisions of the said enactment.[1] The Act also excludes from its operation any land held under a public *wakf* or a trust for public purpose and any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land.

In a Calcutta case,[2] it was held that the corporation is a local authority within the meaning of section 85(a) (iii) of the Act and that the provisions of section 85 apply to all lands vested in a Municipal Corporation irrespective of whether those lands are within or outside the municipal limits of the corporation. As the suit land having vested in the corporation, the Act would have no application.

The word "possession" as used in section 85 includes possession howsoever obtained, irrespective of the fact whether it is obtained by acquisition, by requisition, by negotitation or in any other manner, legal or otherwise.[3]

The term "possession" in clause (d) of section 85(1) of the Act means actual "physical possession" and does not include constructive possession, namely possession which is attributed to the Government having obtained property under requisition and having allotted the same to somebody else who has been physically possessing the land.[4]

Sub-section (2) also excludes the operation of the Act with regard to any non-agricultural land "held by a tenant under the Government." Under the proviso to this sub-section, the right vested in a tenant by the provisions of this Act cannot be divested by the acquisition of superior right in that land by Government.[5] The decision on this point has been affirmed by a Full Bench in the case of *Haji Akhtaruzzaman v.*

1. *Abdul Maleque Laskar v. Begum Tayebunnessa*, (1964) 18 DLR 618 : PLD 1966 Dhaka 217 : PLR 1964 Dhaka 1190.
2. *Girija Prasad Paul v. Corporation of Calcutta*, AIR 1972 (SC) 2391.
3. *Abdul Maleque Laskar v. Begum Tayebunnessa*, (1964), 18 DLR 618 : PLD 1966 Dhaka 217 : PLR 1964 Dhaka 1190.
4. *Ibid.*
5. *Brindaban Chandra Chowdhury v. Mst. Rezia Begum*, (1963) 16 DLR 77 : PLR 1963 Dhaka 1051.

Jadunath Pal.[6] If a tenant has already acquired a right under the provision of this Act and thereafter the Government acquires the superior right of the tenant, the right vested in the tenant cannot be divested by the subsequent acquisition of the superior right by the Government.[7] In the instant case it was held that in the light of the proviso to section 85(2) of the Act a tenant in respect of non-agricultural land would not be deprived of right reposed in him by the provisions of Act on the only ground of acquisition of superior right in the land by Government. The right vested in a tenant by the provisions of the Act is the right to take advantage of the provisions of the Act, including a right which is immediately enforceable and also a right which is enforceable in future, on the happening of a contingency.

Section 85(2) of the Act does not bar the application filed by the opposite parties under section 24 to the Act.

85A. Appeal. (1) An appeal against an order passed by the Deputy Commissioner determining compensation under the proviso to sub-section (1) of section 9 or the proviso to section 20 shall, if presented within thirty days of such order, lie to the Commissioner of Division.

(2) The Board of Revenue may, at any time, on its own motion or on application, revise any order passed by the Commissioner of the Division on appeal under sub-section(1)][8]

86. Certain contracts not to affect the provisions of the Act.—Nothing in any contract between a landlord and a non-agricultural tenant made before of after the commencement of this Act shall take away or limit the rights of such tenant as provided for by this Act, and any contract which is contravention of the provisions of this section or which is

6. (1965) 17 DLR 384 FB : PLD 1967 Dhaka 546 : PLR 1966 Dhaka 213.
7. *Haji Akhtaruzzaman v. Jadunath Pal*, (1965) 17 DLR 384 FB : PLD 1967 Dhaka 546 : PLR 1966 Dhaka 213.
8. Section 85A was inserted after section 85 by E.P. Ord. IX of 1967.

inconsistent with, or purports to alter the effect of, any of the provisions of this Act, shall, to the extent of such contravention or inconsistency or to the extent if purports to alter such effect, be void and without effect.

87. Jurisdiction in proceedings under this Act.—When under this Act a Court is authorised to make an order on the application of a landlord or a non-agricultural tenant, the application shall be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the non-agricultural land comprised in the tenancy in connection with which the application is made.

88. Application of the provisions of the Act to all pending suits appeals and proceedings and unexecuted decrees, for ejectment.—The provisions of this Act shall apply to all suits, appeals and proceeding including proceedings in execution for the ejectment of a non-agricultural tenant which are pending at the date of the commencement of this Act and also to all decrees passed for the ejectment of a non-agricultural tenant which have not been executed and are not barred by limitation and in respect of which no proceedings in execution are so pending, and the tenants against whom such suits, appeals or proceedings are so pending or such decrees have been passed shall not be liable to be ejected on any ground except under the provisions of this Act.

89. Saving of limitation.—In computing the period provided by any law for the time being in force for the execution of a decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, or for the institution of a suit for the ejectment of non-agricultural tenant, the period during which the said Act continued in force shall be excluded.

89A. Calculation of the period of possession.—In calculating for the purposes of this Act the period for which any non-agricultural land has been held by any non-agricultural tenant, the period for which such tenant has held such land while the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 has been in force shall be included.

90. Repeal of Bengal Act IX of 1940 and Assam Act X of 1947.—(1) The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, and the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947, are hereby repealed.

(2) All rents settled or orders issued, suits or other proceedings instituted and other things duly done under the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947, shall, in so far as they are consistent with the provisions of this Act, be deemed to have been respectively settled, issued, instituted or done hereunder.

91. Rules.—(1) The Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

[+ + +][9]

[(c) the manner of determining compensation referred to in the proviso to sub-section (1) of section 9 and in the proviso to section 20;][10]

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9. Clauses *(a)* and *(b)* were omitted by E.P. Ord. IX of 1967. The clauses run thus :-
   "*(a)* the manner in which the landlord or the tenant may apply to the Court under sub-section (2) of section 8;
   (b) the determination of a fair and equitable rent referred to in sub-section (3) of section 11;

10. Clause *(c)* was substituted for clause *(c)*, *ibid.* the original Clause *(c)* runs thus :-
   "*(c)* the limit of enhancement of rent referred to in sub-section (1) of section 19 and the manner of determination of rent referred to in sub-section (2) of that section;

(d) the forms of the notices referred to in section 23, and the amount of the process-fees referred to in the said section;

[+ + +][11]

[(rr) the Revenue-officer referred to in sub-section (1) of section 68.][12]

(s) the manner of service of notice issued under this Act where the mode of such service is not provided in this Act.

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11. Clauses (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and (r) were omitted, *ibid*. These clauses runs thus :-

"(e) the manner of making a survey and preparing a record-of-rights in pursuance of an order under section 27 and the procedure to be followed and the powers to be exercised by Revenue-officers when an order under the said section is made;

(f) the form of a settlement rent-roll referred to in section 29, the manner of preparing the same and the particulars to be specified therein;

(g) the division of a tenancy and the apportionment of the rent under clause (b) of section 30;

"(h) the manner and period of publication of a draft settlement rent-roll under sub-section (1) of section 31 and the disposal of objections under that sub-section;

(i) the Revenue authority referred to in sub-section (1) of section 32;

(j) the publication of the date of confirmation of a settlement rent-roll under sub-section (3) of section 32 and the place and times of inspection of such roll;

(k) the Revenue authority referred to in sub-section(1) of section 33, the manner of presentation of appeals to such authority and the Board of Revenue and the periods within which such appeals shall be presented under the said sub-section;

(l) the settlement of rents referred to in section 38;

(m) the manner of payment or tender of rent by postal money-order under section 44;

(n) the forms to be used generally or for any particular local area or class of cases for the receipt and counterfoil referred to in section 46 and for the statement of account referred to in sub-section (2) of section 47 and the particulars to be specified in such receipt, counterfoil and statement;

(o) the cost of transmission of the money deposited in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 and the amount of the fee referred to in clause (d) of sub-section (2) of that section;

(p) the manner of publication of the general notice referred to in sub-section (2) of section 59;

(q) the form of, the particulars to be contained in, and the manner of verification of, applications referred to in sub-section (2) of section 67;

(r) the amount of process-fee referred to in the second proviso to sub-section (1) of section 72 and the amount of fee referred to in sub-section (3) of that section;

12. Clause (rr) was inserted after clasue (r) so omitted by E.P.Ord. IX of 1967.

Appendix

THE NON-AGRICULTURAL TENANCY RULES, 1950

No. 1286 L.R., 2nd March 1950 (Gazette, 30th March 1950). In exercise of the power conferred by section 91 of the Non-Agricultural Tenancy Act, 1949 Act XXIII of 1949), the Governor is pleased to mkae the following rules, namely :-

1. Short title—These rules may be called the Non-Agricultural Tenancy Rules, 1950.

2. Definition.—In these rules, unles there is anything repugnant in the subject or context—

(1) "the Act" means the Non-Agricultural Tenancy Act, 1949 Act XXIII of 1949); and

(2) "section" means a section of the Act.

3. The manner of making an application under sub-section 2 of section 8—An application under sub-section (2) of section 8 shall be accompanied by a duly authenticated copy of the lease sought to be renewed and shall state—

(i) the name and address of the present landlord (if the applicant is the tenant) or of the present tenant (if the applican is the landlord);

(ii) the area and description of the land with its plot and *Khatian* No. If any, and the *mauza*, thana and district in which the land is situated;

(iii) the existing rent;

(iv) the rent demanded or offered for the renewal of the lease; and

(v) the grounds on which the application is made.

4. Determination of a fair and equitable rent referred to in sub-section (3) of section 11—In determining fair and equitable rent under sub-section (2) of section 11, the Court may also take into consideration the revenue or rent paid for the land by the immediate landlord of the tenant.

5. The limit of enhancement of rent referred to in sub-section (1) of section 19 and the manner of determination of rent referred to in sub-section (2) of that section.—(1) The rent of an undertenant holding the land under a tenant who holds such land at a fixed rent or free of rent shall be liable to enhancememnt up to a limit not exceeding one and a half time the rent which, in the opinion of the Court, would have been payable for the land by the tenant had the rent been fixed under the provisions of sub-section (3) of section 11.

(2) For the purpose of sub-section (2) of section 19, the rent payable by a tenant for a portion of land comprised in his tenancy shall be determined at an amount which the Court thinks fair and equitable having regard to the proportionate area, market value and assets of such portion in relation to the entire tenancy.

6. The forms of notices referred to in section 23, the amount of process fees referred to in the said section and the manner of service of such notices—(1) Notices under section 23 shall contain so far as may be possible, the particulars given in Form No.1 appended to these rules. The party concerned

shall file before the Registering-officer, Civil Court or Revenue-officer, as the case may be, one notice giving the particulars of the transfer and the names of all landlord and all co-sharer tenants who are not parties to the transfer, with correct postal addresses and as many copies giving the said particulars as are necessary in order that one copy may be sent to each such landlord and also to each such co-sharer tenant, where necessary :

Provided that where several tenancies held under the same landlord or with same co-sharer tenants are included in one document of transfer, all such tenancies may be included in one notice for each such landlord or co-sharer tenant.

(2) With each copy of the notice, the party shall file—

(i) a postal registration envelope with the name and address of the party on whom the notice is to be served duly written thereon,

(ii) requisite postal stamp for sending the notice by registered post with acknowledgment due together with an acknowledgment slip duly filled in, and

(iii) a process fee of annas four to be paid in Court fee stamp for meeting the cost of labour involved in sending the notice, maintenance of registers, etc.

(3) The registering officer, Civil Court or the revenue-officer, as the case may be, shall forthwith serve the notices by registered post with acknowledgment due.

(4) If the notice is returned undelivered or the acknowledgment for it is not obtained and on scrutiny it appears to the Registering-officer, the Civil Court or the Revenuie-officer, as the case my be, that the address furnished by the party is correct, the notice shall be served by affixing a copy in the office of the Registering-officer, the Civil Court or the Revenue-officer, as the case may be, for a period of one month and such notice shall thereupon be deemed to have been duly served.

7. The manner of and the procedure for making a survey and preparing a record-of-rights under section 27 and powers to be exercised by Revenue-officers in connection therewith.— (1) In following the provisions of Chapter X of the Bengal Tenancy Act, 1885, and the rules made thereunder, as laid down in clause (b) of section 28, a Revenue-officer may omit any stage of the procedure considered unnecessary by the Director of Land Records and Surveys.

(2) When a Revenue-officer is appointed for the purpose of making a survey and preparing a record-of-rights under Chapter VI of the Act, he may be appointed either with or without the additional designation of "Settlement Officer" of "Assistant Settlement Officer." Every such officer shall exercise all the powers of a Revenue-officer under the Act, and also under the Bengal Tenancy Act, 1885, and Chapter VII of the rules made under the latter Act, in so far as such powers relate to the making of a survey and the preparation of a record-of-rights.

8. The form of a settlement rent-roll referred to in section 29, the manner of preparing the same and the particulars to be specified therein.—(1) The settlement rent-roll referred to in section 29 shall be prepared in Form No. 2 appended to these rules and shall contain the particulars specified in the said form.

(2) Before preparing the roll, the Revenue-officer shall issue a proclamation informing the landlords and tenants concerned of the time and place at which the preparation of the roll will begin. A copy of the proclamation shall also be affixed to the notice-board of his office and of the Thana and the sub-registry office within the jurisdiction of which the lands are situate. In case of municipal areas, a copy shall also be affixed to the notice-borard of the municipal office.

(3) When determining the entries of fair and equitable rent to be made in the roll, the Revenue-officer shall read out or cause to be read out in his presence the principal entries

relating to the land of each tenant and under-tenant, the existing rent of such land and the fair rent which he proposes to estimate. The fair rent which he untimately estimates shall be entered in the roll with his own hand.

9. The division of a tenancy and the apportionment of the rent under clause (b) of section 30.—When non-agricultural lands are comprised in a tenancy which includes agricultural lands, the supplementary Form No. 2-A annexed to these rules shall be used to show how the non-agricultural lands have been separated and the tenancy and its existing rent have been divided in accordance with the provisions contained in clause (b) of section 30. The non-agricultural lands shall then be dealt with in Form No. 2.

10. The manner and the period of publication of a draft settlement rent-roll under sub-section (1) of section 31 and the disposal of objections under that sub-section.—(1) The Revenue-officer shall cause a draft of the roll thus prepared to be published, by placing it for public inspection free of charge, for a period of not less than one month, at such convenient place as he may determine. A proclamation informing the landlords and tenants of the place at which the roll will be open to public inspection and the period during which it will be open to such inspection and during which objection may be made under sub-section (2) of section 31 of the Act, shall be previously published in the same manner as laid down in sub-rule (2) of rule 8.

(2) Any person, who deems himself aggrieved by any entry in or omission from the draft roll, may make an objection by application in writing to the Revenue-officer within the aforesaid period of publication of the draft roll.

(3) Every such application shall be disposed of by the Revenue officer after notice to the applicant and other parties concerned in the matter of the objection, allowing them an opportunity to be heard at a place which shall ordinarily be in or near the village or municipal ward where the land is

situate. The Revenue-officer shall recoord his reasons for each order passed on an objection.

11. The revenue authority referred to in sub-section (1) of section 32.—The Director of Land Records and Surveys shall be the revenue authority to whom a settlement rent-roll shall be submitted for confirmation under sub-section (1) of section 32.

12. The publication of the date of confirmation of settlement rent-roll under sub-section (3) of section 32 and the place and time of inspection of such roll.—When the roll has been confirmed, it shall forthwith be returned by the Director of Land Records and Surveys to the Revenue-officer shall cause the date of confirmation to be published by notification in the Official Gazette. A certified copy of the roll shall remain open to public inspection in the Collector's office for a period of three months from the date of the said notification.

13. The revenue authority referred to in sub-section (1) of section 33, the manner of presentation of appeals to such authority and the Board of Revenue and the period during which such appeals shall be presented under the said sub-section—(1) The revenue authority referred to in sub-section (1) of section 33 to whom an appeal under the said sub-section shall lie in the first instance shall be the Commissioner of the Division.

(2) Every appeal under sub-section (1) of section 33 shall be in writing and shall, in the case of an appeal to the Commissioner of the Division, state clearly the particular entry or omission appealed against and, in the case of an appeal to the Board of Revenue, be accompanied by a certified copy of the order against which the appeal is preferred.

(3) An appeal under sub-section (1) of section 33 to the Commissioner of the Division shall be presented within one month from the date of notification publishing the date of confirmation of the settlement rent-roll to which the appeal relates and an appeal under the said sub-section to the Board of Revenue shall be presented within one month from the date of the order appealed against.

14. The manner of payment or tender of rent by postal money-order under section 44.—When rent is sent by postal money-order, the money-order shall be prepared in the form provided for rent money-order and shall be made payable at the landlord's village office or if any other place has been appointed by the landlord for the payment of rent at such place, and the money-order shall be addressed to the landlord or his agent according as rent has been previously paid to the landlord himself or his agent.

15. The form of receipt and counterfoil referred to in sub-section (3) of section 46 and the particulars to be specified therein.— Receipt and counter-foil referred to in sub-section (3) of section 46 shall, for general use, be in Form No.3 appended to these rules and contain the particular specified therein.

16. The form of statement of account referred to in sub-section (2) of section 47 and the particulars to be specified therein.—The statement of account referred to in sub-sectioin (2) of section 47 shall, for general use, be in Form No. 4 appended to these rules and contain the particulars specified therein.

17. The cost of transmission and the amount of the fee referred to in clause (d) of sub-section (2) of section 51.—(1) For the cost of transmission of money deposited in cass (a) and (b) of sub-section (1) of section 51 referred to in clause (d) of sub-section (2) of that section, the fee payable for sending the amount by postal money-order shall be levied.

(2) For deposites of rent in cases (c) and (d) of sub-section (1) of section 51, the fee referred to in clause (d) of sub-section (2) of that section shall be levied according to the following scale :-

On any sum not exceeding Tk.5 1

On any sum exceeding Tk. 5 but not exceeding Tk.10. 2

On any sum exceeding Tk.10 but not exceeding Tk.25 4

On any sum exceeding Tk.25, four annas for each complete sum of Tk.25 and four annas for the remainder : provided that, if the remainder does not exceed Tk.10, the charge for it shall be only two annas : provided also that in no case shall the fee exceed the sum of Tk.5.

18. The manner of publication of the general notice referred to in sub-section (2) of section 59 : The general notice of transfer referred to be in sub-section (2) of section 59 of the Act may be published by the transferee by fixing up a written notice to the tenants in the village office of the landlord, or, in the presence of not less than two persons, in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the land, and the Court shall thereupon serve the notice on payment of the process fee provided in the rules made by the High Court.

19. Landlord's improvements.—(1) Applications from landlords under section 67 for the registration of improvements shall be made to the Collector of the district. If any such application be presented to any other revenue-officer, he shall forward it for orders to the Collector.

(2) As far as practicable, the application shall be in Form No.5 appended to these rules. The Collector shall either verify the application personally or shall depute a Revenue-officer, not below the rank of *Kanungo*, to make the verification. In all cases, the verification shall be by local inquiry.

(3) Before holding a local inquiry under sub-rule (2), the Revenue-officer shall give, in such manner as he thinks fit, a notice to the applicant and the tenants named in the application of his proposed local innquiry and of the date thereof. The expenses of such notice shall be borne by the applicant for registration.

(4) The Revenue-officer who makes a local inquiry under sub-rule (2) shall ascertain whether the work in question was carried out and, if so, at what time, at what cost, and at whose expense, in what proportion the expenses were borne by the landlord, whether the work is an improvement as defined in section 64 of the Act, and was lawfully made by the landlord and what tenants have been benefited thereby and to what extent. The Revenue-officer shall embody in a proceeeding the result of his local inquiry. When an officer other than the Collector has made the local inquiry, he shall submit the proceeding to the Collector.

(5) The Collector, after considering the proceeding of the local inquiry and after holding such further inquiry as he thinks necessary, shall pass an order directing or refusing the registration of the landlord's improvement.

20. Power of officers recording evidence as to improvements.—The officer who records evidence under sub-section (1) of section 68 of the Act shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII of the Code of Civil Procedure, 1908.

21. Conversion of land not being non-agricultural land into non-agricultural tenancy.—(1) An application under sub-section (1) of section 72 for the conversion of any land not being non-agricultural land into a non-agricultural tenancy shall state—

(*i*) the area and description of the land and, if the land comprises only a portion of a tenancy, also the area and description of the entire tenancy, with relevant plot and *Khatian* Nos. and the *mauza*, *thana* and district in which the lands are situated;

(*ii*) if the applicant is the tenant, the names and addresses of landlord or, if there be more than one landlord, the entire

body of landlords and the co-sharer tenants, if any, and, if the applicant is the landlord, the names and addresses of the co-sharer landlords, if any, and the tenant or, if there be more than one tenant, all such tenants; and

(iii) the existing rent.

(2) *(a)* The process fee referred to in the second proviso to sub-section (1) of section 72 which shall accompany such application shall be paid according to the scale specified below :-

(i) for each notice, whether directed to one or more persons where such persons reside in the same village Tk.1—4.

(ii) Where the notice is to be served on persons in different villages a separate fee shall be charged for service in each village.

(b) The process fees payable under this rule shall be paid in Court-fee stamps.

(3) The notice referred to in the second proviso to sub-section (1) of section 72 shall be in Form No.6 appended to these rules.

(4) The fee which shall accompany an appeal under sub-section (3) of section 72 shall be taka one and annas eight payable in Court-fee stamps.

22. The manner of service of notices issued under the Act where the mode of such service has not been provided in the Act or in the foregoing rules.—(1) Notice to the tenant under sub-section (1) of section 9 or under the proviso to section 20 or under section 75 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the land and shall be served in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908 on payment of the fee provided in the rules made by the High Court.

(2) The notice referred to in the second proviso to sub-section (1) of section 72 shall be served either by registered post or in the manner provided for the service of a revenue process. If an acknowledgment for a notice sent by registered post cannot be obtained, the notice shall be served by affixing a copy in the office of the Collector for a period of one month and such notice shall thereupon be deemed to have been duly served.

(3) In the case *(d)* of sub-section (1) of section 51 referred to in clause *(ii)* of section 53, the notice of the receipt of deposit shall be served by forwarding the notice by registered post, or, where the Court may deem in necessary, in the manner provided for the service of a summons on a defendant under the Code of Civil Procedure, 1908.

(4) Where no other mode of service of notice is provided by the Act or by these rules, service shall be effected in the manner provided for the service of summons on a defendant under the Code of Civil Procedure, 1908, if the notice is addressed to one or more persons occupying or owning the same tenancy; if it is addressed to a number of persons occupying or owning different tenancies in the same village, the notice shall be served in the manner provided for the service of summons on a defendant under the Code of Civil Procedure, 1908, or by proclamation and beat of drum, and by posting it, in the the presence of not less than two persons, on some conspicuous place in the village and also by fixing it up in the village office, if any, where the rent is usually paid. In the case of uninhabited villages, the posting of the notice shall be made in the nearest inhabited village :

Provided that where the person to be served is a minor, notice shall be served on the minor and also either on his or her legal guardian or his or her guardian *ad litem* appointed by the Court for purposes of service on an application by the person asking for service of notice.

23. General scale of process fees in cases not provided for in the foregoing rules.—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court (fees for serving of which are regulated by the Court-fees Act, 1870 (VII of 1870) and not being provided for in any other

rule made under this Act, the process fee shall be levied according to the scale prescribed in sub-rule (2) of rule 21.

FORM NO. I

Notice of transfer for Service on Landlords and Co-sharer Tenants

(Rule 6)

[Section 23, Non-Agricultural Tenancy Act, 1949]

To.. ....

Landlord, Common Agent, Common Manager or Co-sharer Tenant.

Take notice of the transfer of the non-agricultural land (or the portion or share thereof) specified in the Schedule on the reverse.

The transfer for Tk.............................. has been registered at the...Sub-Registry office on ....19...

The sale of the land or the portion or share thereof (or decree or order absolute for the foreclosure of mortgage thereon) for Tk............................... has been confirmed in the Court of .... at.. on.......................19.......................in execution certificate case No...................................... of 19 ....

Sub-Registrar.
Revenue-Officer.
Judge.

[N.B.—Paragraphs or words which are inapplicable should be struck off.]

Names and postal addresses of all landlords and co-sharer tenants.

Item No. in the schedule.	Names of land-lords (and cosharer tenants)	Postal address.	Name and Postal address of Common agent or common manager, if any.

(Reverse)

Schedule.

Column 1. Name, father's name and residence of transferor or judgment-debtor.

Column 2. Name, father's name and residence of transferee or decree-holder.

Column 3. Nature of transfer (in case of sale, name, father's name and residence of purchaser also to be given).

Column 4. Item No. in the document or of sale or foreclosure.

Column 5. Name of estate and *tauzi* No.

Column 6. Village and *thana* in which the land is situated.

Column 7. *Khatian* No. of the landlord of the land transferred.

Column 8. *Khatian* No. of the land transferred with area (when a whole tenancy is not transferred particulars of the plots transferred with area to be given).

Column 9. Nature of the tenancy (whether coming under section 7, 8, 9 or 10 or Chapter IV).

10. Extent of interest transferred.

11. Annual rent of the tenancy (if not rent-free).

12. Proportionate rent in case of transfer of a portion or share of tenancy.

13 Consideration money or value as set forth in the document of transfer or sale price in the case of sale in execution of decree or certificate or market value determined by Court in case of foreclosure of mortgage.

14. Remarks.

To

Landlord, Common Agent,
Common Manager or Co-sharer Tenant.
Village ----------------------
Post Office -----------------
District --------------------

From : Sub-Registrar.

Revenue-Officer.

Judge.

FORM NO. 2

SETTLEMENT RENT ROLL

(Rule 8)

District.................................Thana.....................................Tauzi No. ....

Estate.......................................

Name and Jurisdiction list No. of village..........................

No. of khatian.	Tenants.	Area for which present rent is paid.		According to present survey.			Total area.		Proposed by Revenue Officer.		Superior interest.			Present rent.	Fair rent settled by Revenue Officer.	Cess (in case of cess tenants).	Remarks. Here give an abstraot of reasons of difference, if any, between columns 9 & 14.
	Description of interest and possessor's name.	In acres.	In local measure.	Class of land.	Area in direct possession.	Area sub-let.	In acres.	In local measure.	Rate per aore.	Rent.	No. of khatian.	Description of interest and possessor's name	Respeotive share.				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

FORM NO. 2A.

DIVISION OF TENANOY UNDER SECTION 30(B).

(Rule 9)

Khatian No.(at attestation).	Name of tenants.	Total area.	Existing rent.	Agricultural portion.												Non Agricultural portion.												Name of landlord.	His Khatian No.	Date, with signature of Revenue Officer, of correction of recordes.	Remarks.
				Khes.						Sub-let.						Khes.						Sub-let.									
				New Khatian No.	Plot No.	Description.	Area in acres.	Rate.	Rent.	Naw Khatian No.	Plot No.	Description.	Area in acres.	Rate.	Rent.	New Khatian No.	Plot No.	Description.	Area in acres.	Rate.	Rent.	Naw Khatian No.	Plot No.	Description.	Area in acres.	Rate.	Rent.				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32

Form No. 3

(Rule 15)

Book No.

Form of Rent Receipt

(Landlord's Portion.)

1. Serial number of receipt....................
2. Estate.........................
   Village............................
   Thana..............................
3. Tenant's name........................
   son of ....
4. Area of the tenancy, if known......................
   Rent of the tenancy Rupees ....
   Government Cesses, Road cess, Rs........................
   Public Works cess,
   Rs........................
5. Details of payments—

Rent { Current on account of kist or year................ Rs........... Arrear on account of kist or year.................... Rs................

Cesses { Current on account of kist or year.................. Rs........... Arrear on account of kist or year..................... Rs................

6. Signature of the landlord or his authorised agent.........

Form of Rent Receipt

(Tenant's Portion.)

1. Serial number of receipt...................
2. Estate ....
   Village ....
   Thana ....
3. Tenant's name ....
   son of ....
4. Area of the tenancy, if known ....
   Rent of the tenancy Rupees ....
   Government Cesses, Road cess, Rs ....
   Public Works cess,
   Rs ....
5. Details of payments—

Rent { Current on account of kist or year............................ Rs........... Arrear on account of kist or year.................... Rs................

Cesses { Current on account of kist or year........................ Rs........... Arrear on account of kist or year.................... Rs................

6. Signature of the landlord or his authorised agent ....

Form No. 4

(Rule 16)

Form of Statement of Account

(Landlord's Portion.)

1. Year ....
2. Tenant's name......................
3. Particulars of the tenancy—(area, rent, etc.)......................
....

Area—

	Rs.	As.	P.
Rent			
Government Cesses			

4. Demand of the year ....
5. Balance of former years ....

	Rs.	As.	P.
6. Total domand (Current and arrear)			

7. Paid each on account of—
   Current demand ....
   Arrear demand ....
8. Balance outstanding at end of year ....
9. Signature of the landlord or his authorised agent ....

Form of Statement of Account.
(Tenants Portion.)

1. Year ....
2. Tenant's name ....
3. Particulars of the tenancy—(area, rent, etc.) ....
   Area—

	Rs.	As.	P.
Rent			
Government Cesses			

4. Demand of the year ....
5. Balance of former years ....

	Rs.	As.	P.
6. Total demand (current and arrear)			

7. Paid each on account of—
   Current demand .....
   Arrear demand ....
8. Balance outstanding at end of year ....
9. Signature of the landlord or his authorised agent ....

Form No. 5
Application.
[Rule 19 (2).]
(Section 67, East Bengal Non-Agricultural Tenancy Act, 1949.)

To
The Collector of...
The application ....
son of......................... resident of (full address) for registration of an improvement under section 67 of the East Bengal Non-Agricultural Tenancy Act, 1949.

Name of the locality.	Nature of applicants interest in land improved.	Nature of improveme nt	By whom executed, at whose expense and in what proportion expenses borne by landlord.	Cost of improveme nt.	When executed.	Names and addresses of all tenants benefited in each locality.	To what extent each tenant has been benefited.
1	2	3	4	5	6	7	8

Form No. 6.

Notice of Conversion of Land Not Non-Agricultural Into Non-Agricultural Tenancy.

[Rule 21 (3.)]

(Second proviso to section 72 (1), East Bengal Non-Agricultural Tenancy Act, 1949.)

To.................

Landlord/Co-sharer Landlord/ Tenant/Co-sharer Tenant.

Take notice of the order passed for the conversion of the land specified in the Schedule on the reverse into non-agricultural land with effect from the .... (date).

(With effect from the said date, the rent of the original tenancy excluding the above mentioned land shall be Rs.................)

Collector.

N.B.—Strike out the paragraph within brackets when the land converted comprises an entire tenancy.

(Reverse)

Schedule.

Column 1. Name, Father's name and address of the tenant.

Column 2. Name of estate and tauzi No.

Column 3. Village and thana in which the land is situated.

Column 4. Khatian No. of the landlord of the land.

Column 5. Khatian No. of the tenancy with area (when a whole tenancy is not converted, particulars of the plot or plots converted with area to be given).

Column 6. Rent fixed for the land converted.

Column 7. Remarks.

By order of the Governor,
M. Ahmed.
Dy. Secy. to the Govt. of East Bengal.

THE LAND REFORMS ORDINANCE, 1984

(Ordinance No. XX of 1984)

(26th January, 1984)

An ordinance to reform the law relating to land tenure, land holding and land transfer with a view to maximissing production and ensuring a better relationship between land owners and bargadars.

Whereas it is expedient to reform the law relating to land tenure, holding and land transfer with a view to maximussing production and ensuring a better relationship between land owners and bargadars.

Now, therefore, in pursuance of the proclamation of the 24th March, 1982 and in exercise of all powers enabling his in that behalf, the president is pleased to make and promulgate the following ordinance :

CHAPTER 1

Preliminary

1. Short title and commencement.-(1) This ordinance may be called the Land Reforms Ordinance, 1984.

(2) If shall come into force on such date, as the government may by notification in the Official Gazettee, specify.

2. Definitions.-In this ordinance, unless there is anything repugnant in the subject or context—

(a) "bargadar" means a person who under the system generally known as adhi, barga or bhag cultivates the land of another person on condition of delivering a share of produce of such land to that person;

(b) 'barga contract' means the contract under which any land is cultivated by a person as a bargadar;

(c) "barga land" means any land under cultivation of any person as a bargadar;

(d) "family", in relation to a person, includes such person and his wife, son, unmarried daughter, son's wife, son's son and son's unmarried daughter :

Provided that an adult or married son who has been living in a separate mess independent of his parents and pays union rate in his own name and his wife, son and unmarried daughter shall be deemed to constitute a separate family;

(c) "homestead" means a dwelling house with out-houses, tanks and enclosures immediately connected with it covering an area of not more than one standard bigha:

Provided that where such area exceeds one standard bigha, the excess land shall not be deemed to be homestead;

(f) "malik" means a person or an organisation, body or authority holding agricultural land;

(g) "Owner, in relation to a barga land, means the person from whom the bargadar gets the land for cultivation under a barga contract;

(h) "personal cultivation" means cultivation by a person of his own land or barga land on his own account—

(i) by his own labour, or

(ii) by the labour of any member of his family, or

(iii) by the labour of any servant, or labourer employed on wages to supplement his own labour or labour of any member of his family;

(i) "prescribed" means prescribed by rules made under this Ordinance;

(j) "prescribed appellate authority" means an authority appointed by the Government, by notification in the Official Gazette, for the purpose of hearing all or any of the appeals under this Ordinance, or an authority specified in the rules for such purpose;

(k) "prescribed authority" means an authority appointed by the Government, by notification in the Official Gazette, for all or any of the purposes of this Ordinance, except for the purpose of hearing appeals, or an authority specified in the rules for such purposes;

(l) 'produce' includes straw, stalk of any crop and any other crop residue;

(m) "rules" means rules made under this Ordinance;

(n) "rural area" means any area which is not included within a municipality.

3. Ordinance to override other laws, etc.-The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any custom or usage or in any contract or instrument.

CHAPTER II

Limitation on Acquisition of Agricultural Land

4. Limitation on acquisition of agricultural land.-(1) No malik who or whose family owns more than sixty standard bighas of agricultural land shall acquire any new agricultural land by transfer, inheritance, gift or any other means.

(2) A malik who or whose family owns less than sixty standard bighas of agricultural land may acquire new agricultural land by any means, but such new land, together with the agricultural land owned by him, shall not exceed sixty standard bighas.

(3) If any malik acquires any new agricultural land in contravention of the provisions of this section, the area of land which is in excess of sixty standard bighas shall vest in the Government and no compensation shall be payable to him for the land so vested, except in the case where the excess land is acquired by inheritance, gift or will.

(4) Compensation for the excess land payable under sub-section (3) shall be assessed and paid in such manner as may be prescribed :

Provided that where such compensation is payable only for a portion of the excess land, the assessment and payment of compensation shall be made for such portion of the excess land as the malik may specify in this behalf.

CHAPTER III

Prohibition of Benami Transaction of Immovable Property

5. No benami transaction.-(1) No person shall purchase any immovable property for his own benefit in the name of another person.

(2) Where the owner of any immovable property transfers or bequeaths it by a registered deed, it shall be presumed that he has disposed of his beneficial interest therein as specified in the deed and the transferee or legatee shall be deemed to hold the property for his own benefit, and no evidence, oral or documentary, to show that the owner did not intend to dispose of his beneficial interest therein or that the transferee or legatee holds the property for the benefit of the owner, shall be admissible in any proceeding before any court or authority.

(3) Where any immovable property is transferred to a person by a registered deed, it shall be presumed that such person has acquired the property for his own benefit, and where consideration for such transfer is paid or provided by another person it shall be presumed that such other person intended to pay or provide such consideration for the benefit of the transferee, and no evidence, oral or documentary, to show that the transferee holds the property for the benefit, of any other person or for the benefit of the person paying or providing the consideration, shall be admissible in any proceeding before any court of authority.

CHAPTER IV

Homesteads

6. No eviction, etc., from homestead.-Any land used as a homestead by its owner in the rural area shall be exempted from all legal processes, including seizure, distress, attachment or sale by any officer, court or any other authority and the owner of such land shall not be divested or dispossessed of the land or evicted therefrom by any means :

Provided that nothing in this seciton shall apply to the acquisition of such homestead ...... any law.

The change, in the meantime, the of the stands in the way of the transferor getting the homestate restored to him under the provision of ordinance No. XXVIII of 1976, for under the New Law (ordinance XX of 1984) the homestead is exempt from all legal processes.

Comments

The change, in the mean time of the law stands in the way of the transfer or getting the home stead restored to him under the provision of Ordinance No. XXVIII of 1976, for, under the new law (Ordinance XX of 984) the homestead is exempt from all legal processes.[1]

Section 6 of the Ordinance bars legal in respect of any land within rural area which is being used as a homestead by its owner.[2]

The proviso to section 6 of the Ordinance provides that this section shall not be a bar against-acquisition of a homestead under any law. A decree in a suit for declaration of title and recovery of possession of homestead land passed by a civil Court cannot be rendered nugatory by application of section 6 of the Ordinance.[3]

7. Settlement of khas land for homestead.-(1) Where in the rural area any khas land fit for being used as homestead is

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1. 44 DLR 414.
2. 21 BLD (HC) 244.
3. 21 BLD (HC) 223.

available, the Government shall, in settling such land, give preference to landless farmers and labourers :

Provided that not more than five kathas of such land shall be allotted for such purpose to any individual.

(2) Any land settled under sub-section (1) shall be heritable but not transferable.

CHAPTER V
Bargadars

8. Cultivation under barga contract.-(1) Subject to the other provisions of this Ordinance, no person shall allow another person to cultivate his land and no person shall cultivate the land of another person on condition of sharing the produce of such land between them unless they execute a contract for such cultivation in such form and manner as may be prescribed.

(2) A barga contract shall be valid for a period of five years commencing from such date as may be specified in the barga contrct.

9. Recognition of existing bargadars.-(1) Any person cultivating tha land of another person as a bargadar immediately before the commencement of Ordinance shall be deemed to be a bargadar in respect of such land under this Ordinance.

(2) The owner and the bargadar of any land referred to in sub-section (1) shall execute a contract as required under section 8 within ninety days from the date of commencement of this Ordinance.

(3) If the parties fail to execute the contract within the specifide period, any of them may make an application to the prescribed authority for getting a contract executed.

(4) The prescribed authority shall, after making such enquiry as it deems fit, within sixty days of receipt of the application, decide whether or not the applicant is entitled to get such contract executed.

(5) If the prescribed authority decides that the applicant is entitled to get a contract executed in respect of any property mentioned in the application, it shall direct the opposite party to execute the contract within two weeks from the date of receipt of the direction and, if such party fails to execute, the authority shall execute it on behalf of such party.

(6) A barga contract executed under this seciton shall be deemed to be effective from the date of commencement of this Ordinance, and shall be valid for a period of five years from that date.

10. Cultivation of barga land after bargadar's death.-(1) Where a bargadar dies before the expiry of the period of barga contract, the cultivation of the barga land may be continued by the surviving members of the family of the deceased bargadar till such expiry or till the barga contract is terminated under this ordinance.

(2) Where the bargadar dies without leaving any person in his family who is in a position to cultivate the land, the owner of the land may bring the land under his personal cultivation or allow such land to be cultivated by another bargader.

11. Termination of barga contract.-(1) No owner shall be entitled to terminate a barga contract except in execution of an order, made by the prescribed authority, on the ground that—

(a) the bargadar has, without any reasonable cause, failed to cultivate the barga land;

(b) the bargadar has, without any reasonable cause, failed to produce any crop equal to the average output of such crop in any land similar to the barga land in the locality;

(c) the bargadar has used the barga land wholly or partly for any purpose other than agriculture;

(d) the bargadar has contravened any provision of this Ordinance or the rules or orders made thereunder;

(e) the bargadar has surrendered or voluntarily abandoned his right of cultivation;

(f) the barga land is not under personal cultivation of the bargadar, or

(g) the owner requires the barga land *bona fide* for personal cultivation.

(2) If the owner, without reasonable cause, fails to bring under personal cultivation any land on termination of a barga contract under sub-section (1) (g) or allows such land to be cultivated by some other bargadar within twenty-four months of the date of such termination, the prescribed authority may, on an application made by the evicted bargadar, restore the possession of the land to such bargadar who shall thereupon continue to cultivate the land till the expiry of the period of barga contract or termination of the barga contract under this Ordinance.

12. Division of produce of barga land.–(1) The produce of any barga land shall be divided in the following manner, namely :—

(a) one-third shall be received by the owner for the land;

(b) one-third shall be received by bargadar for the labour;

(c) one-third shall be received by the owner ore the bargadar or by both in proportion to the cost of cultivation, other than the cost of labour, borne by them.

(2) The harvested crop of any barga land shall be stored for thrashing and division either at any place belonging to the bargadar or at any place belonging to the owner, whichever is nearer to the barga land, or at anyother place agreed upon between the parties.

(3) The bargadar shall tender to the owner the share of the produce due to him immediately after harvesting of the crop and when the tendered share is accepted by the owner, each party shall give to the other a receipt in such form as may be prescribed for the quantity of the produce received by him.

(4) If the owner refuses to accept the share of the produce tendered to him by the bargadar or to give a receipt thereore, the bargadar shall give intimation of such fact in writing to the prescribed authority.

(5) The prescribed authority shall, on receipt of such intimation, serve a notice upon the owner, in such form and manner as may be prescribed, asking him to take delivery of the produce within seven days from the date of service of the notice.

(6) If the owner fails to take delivery of the produce within seven days from the date of service of the notice, the prescribed authority shall permit the bargadar to sell the produce to any government purchasing agency or, in the absence of such agency, in the local market.

(7) If the bargadar sells the produce, he shall deposit the proceeds of such sale with the prescribed authority within seven days from the date of sale.

(8) The prescribed authority shall give to the bargadar a receipt, in such form as may be prescribed, stating therein the amount of money deposited with him and the quantity of produce sold by the bargadar and such receipt shall discharge the bargadar from his obligation to deliver the share of the produce to the owner :

Provided that where the quantity of the produce is due to the owner, the obligation of the bargadar with regard to the delivery of the quantity of the produce not tendered or sold shall continue.

(9) Where a deposit is made under sub-section (7), the prescribed authority shall give intimation of such deposit to the owner in such form and manner as may be prescribed.

(10) If the owner does not receive the money in deposit from the prescribed authority within one month from the date of receipt of intimation of such deposit, the prescribed authority may deposit the money in the treasury in revenue deposit to the credit of the owner and give intimation of such deposit to the owner in such from and manner as may be prescribed.

13. Bargadar's right to purchase.–(1) Where the owner intends to sell the barga land, he shall ask the bargadar in writing if he is willing to purchase the land :

Provided that this provision shall not apply where the owner sells the land to a co-sharer or to his parent, wife, son, daughter or son's son or to any other member of his family.

(2) The bargadar shall, within fifteen days from the date of receipt of the offer, inform the owner in writing of his decision to purchase or not to purchase the land.

(3) If the bargadar agrees to purchase the land, he shall negotiate the price of the land with the owner and purchase the land on such terms as may be agreed upon between them.

(4) If the owner does not receive any intimation from the bargadar regarding his decision either to purchase or not to purchase the land within the specified time or if the bargadar informs the owner of his decision not to purchase the land or if the bargadar does not agree to pay the price demanded by the owner, the owner may sell the land to any person he deems fit :

Provided that the owner shall not sell the land to such person at a price which is lower than the price offered by the bargadar.

(5) Where the barga land is purchased by a person other than the bargadar, the barga contract in respect of the land shall be binding upon the purchaser as if the purchaser were a party to the contract.

14. Ceiling of barga land.-(1) No bargadar shall be entitled to cultivate more than fifteen standard bighas of land.

Explanation.-In computing this ceiling, area of any land owned by the ....well as the land cultivated by him as a bargadar and held by him under a complete usufructuary mortgage shall be taken into account.

(2) If a bargadar cultivates land in excess of fifteen standard bighas, the share of the produce due to him as a bargadar in respect of the excess land may be compulsorily procured by the Government by order made in this behalf by the prescribed authority.

15. Restriction of cultivation.-(1) No person shall cultivate the land of another person except under a barga contract or complete usufructuary mortgage or as a servant or labourer.

(2) If a person cultivates the land of another person in violation of the provisions of this section, the produce of the land may be compulsorily procured by the Government by order made in this behalf by the prescribed authority.

16. Disputes.-(1) Every dispute between a bargadar and the owner in respect of—

(a) division or delivery of the produce,

(b) termination of barga contract,

(c) place of storing and thrashing of the produce, shall be decided by the prescribed authority.

(2) If in deciding any dispute referred to in sub-section (1) any question arises as to whether a person is a bargadar or not or to whom the share of the produce is deliverable, such question shall be determined by the prescribed authority.

(3) The prescribed authority shall not entertain any dispute if it is not referred to it by an application praying for its decision thereon within three months form the date on which the dispute arose.

(4) The prescribed authority shall, after giving the parties an opportunity of being heard and adducing evidence and making such enquiry as it deems necessary, give its decision within three months from the date of receipt of the application.

17. Appeals.-(1) An appeal shall lie to the prescribed appellate authority against any order, decision or action made or taken by the prescribed authority under any provision of this Ordinance.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of receipt or knowledge of the order, decision or action appealed against.

(3) The decision of the prescribed appellate authority shall be final.

18. Procedure.-(1) The prescribed authority and the prescribed appellate authority shall, in deciding any matter, dispute or appeal, follow such procedure as may be prescribed.

(2) Any person filing any application to the prescribed authority or any appeal to the prescribed appellate authority shall pay such fees as may be prescribed.

19. Execution.-Any decision or order of the prescribed authority or of the prescribed appellate authority shall be executed or enforced in such manner as may be prescribed.

CHAPTER VII
Miscellaneous

20. Bar of jurisdiction.-No order, decision, action or proceedings made or taken by any authority under this Ordinance shall be called in question in any court and no court shall entertain any suit or proceeding in respect of any such order, decision, action or proceedings.

21. Penalty.-Any person who violates any provision of this Ordinance or the rules or any order of any authority made under this ordinance or the rules shall be punishable with fine which may extend to two thousand taka.

22. Power to make rules.-The government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

THE LAND REFORMS RULES, 1984

CHAPTER I
Preliminay

1. (1) These rules may be called the Land Reforms Rules, 1984.

(2) In these rules, unless there is anything repugnant in the subject or context,—

(a) "Form' means a Form annexed to these rules;

(b) "Ordinance" means the Land Reforms Ordinance, 1984 (Ordinance No. X of 1984);

(c) "Section" means a section of the Ordinance.

CHAPTER II
Powers of Prescribed Authority and Prescribed Appellate Authority.

2. (1) For the purpose of performance of its functions under the Ordinance, a prescribed authority or a prescribed appellate authority—

(a) shall, where necessary, take evidence in the Bengali language and shall follow the procedure laid down in the code of Civil Procedure, 1908 (Act V of 1908), for disposal of a suit before a civil court, as nearly as practicable;

(b) may enter, along with such officers as it considers necessary, any land or premises within its juridiction with previous notice for the purpose of inspection or enquiry;

(c) may require any person, by notice in writing, to make and deliver to it a statement or to produce any record or document relating to any land or holding which is or is believed to be in his possession or under his control.

(2) For the purpose of any enquiry under the Ordinance, a prescribed authority or a prescribed appellate authority shall have the power to summon and enforce attendance of any

person as a witness in the same manner as is provided in the case of trial of suits under the Code of Civil Procedure, 1908 (Act of 1908).

3. (1) If any act of a bargadar falls within the mischief of any of the provisions of clauses (a) to (f) of sub-section (1) of section 11 or if the barga land is required by the owner under clause (g) of that sub-section for personal cultivation, the owner shall apply in writing to the prescribed authority for termination of the barga contract stating full facts.

(2) On receipt of an application under sub-section (1) the prescribed authority shall draw up a proceeding and ask the bargadar to show cause within fourteen days from the date of receipt of the notice in Form "Ka" as to why the barga contract will not be terminate.

(3) On receipt of reply from the bargadar or, if the bargadar fails to show cause by the date specified in the notice, the prescribed authority shall, after causing such enquiry as he deems necessary and giving the parties an opportunity to be heard, pass an order in writing on merit of the case.

4. (1) On receipt of an intimation under sub-section (4) of section 12 that the owner has refused to accept his due share of the produce or to give a receipt therefore the prescribed authority shall cause service of a notice in Form "Kha" directing the owner to take delivery of the produce from the bargadar and to grant receipt therefore within fourteen days from the date of receipt of the notice, failing which the bargadar shall be permitted to sell produce to any Government purchasing agency or, in the absence of such agency, to the local market as provided in sub-section (6) of section 12.

(2) When a bargadar deposits the sale proceeds of the share of the owner with the prescribed authority under sub-section (7) of section 12 the prescribed authority shall grant him a receipt in Form "Ga".

(3) On receipt of the proceeds under sub-rule (2) the prescribed authority shall intimate the owner in Form "Gha" about the money so deposited and direct him to receive the money within one month from the date of receipt of the intimation. If the owner fails to receive the money within the period specified in the intimation, the prescribed authority shall deposit the money in the treasury in revenue deposit and give intimation of such deposit to the owner in Form "Uma".

(4) In determining the actual produce of any land for the purpose of division or delivery under clause (a) of sub-section (1) of section 16, the prescribed authority shall have the power to make crop cutting experiment of a portion of land by prior notice to the owner and the bargadar.

CHAPTER III

Rates of Compensation

5. The rates of compensation for excess land under sub-section (4) of section 4 shall be assessed as under:—

(a) where total quantity of land vested in the Government does not exceed 50 standard bighas, at twenty percentum of the market value of such land;

(b) where the total quantity of land vested in the Government exceeds 50 standard bighas, for the first 50 standard bighas at twenty percentum of the market value of such land, and, for the balance at ten percentum of the market value of such land :

Provided that the family shall have the option to select the land liable to be vested in the Government.

CHAPTER IV

Barga Contract

6. (1) A barga contract between the owner and the bargadar as provided in section 8 shall be executed in Form "Cha".

(2) Every barga contract shall be executed on non-judicial stamp of the denomination of taka three in triplicate, one each for the owner, the bargadar, and the prescribed authority. Value of the non-judicial stamp may be changed by the Government, by notification in the Official Gazette, from time to time.

(3) An application under sub-section (3) of section 9 for getting a barga contract executed shall be accompanied by court-fee stamps worth taka two together with a stamped envelope showing present address of the other party to cover postal charges for issue of direction in Form "Chha" to the latter by registered post for execution of the barga contract as is required under sub-section (5) of that section.

(4) When a barga contract is executed it shall be entered in a register to be maintained by the prescribed authority in Form "Ja" and shall be assigned a registration number.

CHAPTER V

Effect of the death of bargadar

7. (1) In the event of death of the bargadar any surviving member of his family may apply to the prescribed authority stating that the family intends to continue the barga contract and send to it the particulars of the person in whose name the barga contract will continue. This notice .... triplicate in Form "Jha":

(2) The prescrived authority shall, on receipt of the application under sub-rule (1), make an enquiry into the matter and, if it is satisfied that the family is in a position to cultivate the land, shall allow the contract to continue as per provisions of sub-section (1) of section 10.

(3) Where the owner of a land wants to bring the land under his personal cultivation or to allow it to be cultivated by another bargadar under section 10, he shall file a prayer to the prescribed authority affixing court-fee stamps worth taka two only. On receipt of such prayer the prescribed authority shall get the matter locally enquired within 30 days of the receipt of the prayer in such manner as it deems fit, and if it is satisfied that no member in the family of the deceased bargadar is in a position to cultivate the land, it shall cancel the barga contract. If it is satisfied that the family is in a position to cultivate the land, it shall mutate the name of the heir of the deceased bargadar by realising a fee of taka five only from such heir.

CHAPTER VI

Method of sharing of the produce

8. (1) When the bargadar tenders share of the produce after harvesting and the owner accepts it, both the parties shall sign a receipt in Form "Ta" as required under sub-section (3) of section 12.

(2) On receipt of an intimation under sub-section (4) of section 12, the prescribed authority shall issue a notice in Form "Kha" to the owner to take delivery of his share of the produce tendered by the bargadar pending final assessment of the produce of the land and due share of each of the parties to the barga contract.

(3) If the bargadar fails to deposit the sale proceeds of the share of the produce of the owner to the prescribed authority within seven days from the date of sale as required under sub-section (7) of section 12, the market vlue of the share produce payable to the owner shall be determined by the prescribed authority and the bargadar shall be liable to deposit the amount so determined.

(4) When a bargadar deposits the sale proceeds under sub-section (7) of section 12, the prescribed authority shall send on the owner an intimation under sub-section (9) of that section in form "Gha" and ask him to receive the money so deposited within one month form the date of receipt of the intimation. An amount of taka ten only shall be deducted from the total amount payable to the owner to cover postal and other charges and the same shall be credited to the Government treasury by challan as miscellaneous receipt by the prescribed authority.

THE ACQUISITION & REQUISITION OF IMMOVABLE PROPERTY ORDINANCE, 1982

(Or. No.II of 1982)

[13th April, 1982]

An Ordinance to consolidate and amend the law relating to Acquisition & Requisition of Immovable Property

Whereas it is expedient to consolidate and amend the law relating to acquisition and requisition of immovable property and to provide for matters connected therewith and ancillary thereto;

Now, therefore, in pursuance of the proclamation of the twenty fourth day of March, 1982, and in exercise of all powers enabling him in that behalf, the Chief Martial Law Administrator is pleased to make and promulgate the following Ordinance:

Part I
Preliminary

1. Short Title : This Ordinance may be called the Acquisition & Requisition of Immovable Property Ordinance, 1982.

2. Definitions : In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "Arbitrator" means an Arbitrator appointed under section 27;

(b) "Deputy Commissioner" includes an Additional Deputy Commissioner and any other officer authorised by the Deputy Commissioner to exercise any power conferred, or perform any duty imposed, on the Deputy Commissioner by or under this Ordinance;

(c) "owner" includes the occupier;

(d) "person interested", in relation to any property, includes all persons claiming, or entitled to claim, an interest in the compensation payable on account of the acquisition or requisition of that property under this Ordinance;

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "property" means immovable property and includes any right in or over such property; and

(g) "requiring person" means any person for whom any property is, or is proposed to be, acquired under this Ordinance.

Part II
Acquisition

3. Publication of preliminary notice of acquisition of property : Wherever it appears to the Deputy Commissioner that any property in any locality is needed or is likely to be needed for any public purpose or in the public interest, he shall cause a notice to be published at convenient places on or near the property in the prescribed form and manner stating that the property is proposed to be acquired:

Provided that no property used by the public for the purpose of religious worship, graveyard and cremation ground shall be acquired.

4. Objection against acquisition : (1) Any person interested in any property which has been notified under section 3 as being needed or likely to be needed for any public purpose or in the public interest may, within fifteen days after the publication of the notice, object to the acquisition of the property.

(2) Every objection made under sub-section (1) shall be made to the Deputy Commissioner in writing, and the Deputy Commissioner shall give the objector an opportunity of being heard either in person or by an agent and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, prepare a report within thirty days following the expiry of the period specified under sub-section (1) containing his opinion on the objections.

(3) The Deputy Commissioner shall then-

(a) If the property exceeds fifty standard bighas of land, submit the record of the proceedings held by him, together with his report, for the decision of the Government; and

(b) If the property does not exceed fifty bighas of land, submit the record of the proceedings held by him, together with his report, for the decision of the Divisional Commissioner:

Provided that if no objection is raised within the period specified in sub-section (1), the Deputy Commissioner shall, instead of submitting the records of the proceedings to the Divisional Commissioner, make a decision within ten days of the expiry of the aforesaid period, or within such further period but not exceeding thirty days, as the Divisional Commissioner permits on the request of the Deputy Commissioner in writing about the acquisition of the property and such decision of the Deputy Commissioner shall be final.

5. Final decision regarding acquisition : (1) The Government or, as the case may be, the Divisional Commissioner after considering the report submitted by the Deputy Commissioner under section 4(3), shall make a decision about the acquisition of the property and such decision of the Government or, as the case may be, the Divisional Commissioner shall be final.

Provided that-

(a) where the decision is to be made by the Divisional Commissioner, it shall be made within fifteen days from the date of the submission of the report or within such further time but not exceeding one month, as he may think fit for reasons to be recorded by him in this behalf;

(b) where the decision is to be made by the Government, it shall be made within a period not ninety days from the date of the submission of the report.

(2) When the Government, the Divisional Commissioner as the case may be, makes a decision for acquisition of the property under sub-section (1) or the proviso to section 4(3)(b) as the case may be, such decision shall be conclusive evidence that the property is needed for a public purpose or in the public interest.

6. Notice to persons interested : (1) When the Government, the Divisional Commissioner or the Deputy Commissioner, as the case may be, has made a decision for acquisition of any property under section 5 or the proviso to section 4(3)(b), as the case may be, the Deputy Commissioner shall cause public notice to be given in prescribed manner at convenient places on or near such property stating that the Government, the Divisional Commissioner or the Deputy Commissioner, as the case may be, has decided to acquire the property and intends to take possession thereof and that claims to compensation for all interests in such property may be made to him.

(2) Such notice shall state the particulars of the property to be acquired and taken possession of, and shall require all persons interested in the property to appear personally or by agent before the Deputy Commissioner at a time, not being earlier than fifteen days after the publication of the notice, and place mentioned therein and to state the nature of their respective interests in the property and the amount and particulars of their claims to compensation for such interests.

(3) The Deputy Commissioner shall also serve notice to the same effect in the prescribed form on the occupier, if any, of such property and on all persons known or believed to be interested therein.

(4) The Deputy Commissioner may also, by notice, require any such person to make or deliver to him at a time, not being earlier than fifteen days after the date of service of the notice, and place mentioned therein a statement containing, so far as may be practicable, the name of every other person possessing any interest in the property or any part thereof as compensation -sharer, mortgagee or otherwise, and of the nature of such interest and profits, if any, received or receivable on account thereof.

(5) Every person required to make or deliver a statement under this section shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Penal Code (XLV of 1860).

7. Award of compensation by deputy commissioner : (1) On the date so fixed, or on any other date to which the enquiry has been adjourned, the Deputy Commissioner shall proceed to enquire into the statement, if any, which any person has made pursuant to a notice given under section 6 and into the value of the property at the date of the publication of the notice under section 3, and into the respective interests of the persons claiming the compensation and shall make an award of-

(a) the compensation which in his opinion, shall be allowed for the property; and

(b) the apportionment of the said compensation among all the persons known or believed to be interested in the property, of whom, or of whose claims, he has information.

(2) The award made by the Deputy Commissioner shall, except as hereinafter provided, be final.

(3) The Deputy Commissioner shall, within seven days from date of making award of compensation-

(a) give notice of his award to the person interested;

(b) send the estimate of the award of compensation to the requiring person.

(4) The requiring person shall deposit the estimated amount of the award of compensation with the Deputy Commissioner in the prescribed manner within sixty days from the receipt of the estimate.

8. Matters to be considered in determining compensation : (1) In determining the amount of compensation to be awarded for any property to be acquired under this Part, the Deputy Commissioner shall take into consideration-

(a) the market value of the property at the date of publication of the notice under section 3:

Provided that in determining such market value, the Deputy Commissioner shall take into account the average value, to be calculated in the prescribed manner, of the properties of similar description and with similar advantages

in the vicinity during the twelve months preceding the date of publication of the notice under section 3;

(b) the damage that may be sustained by the person interested, by nature of the taking of any standing crops or trees which may be on the property at the time of taking possession thereof by the Deputy Commissioner;

(c) the damage that may be sustained by the person interested, at the time of taking possession of the property by the Deputy Commissioner, by reason of severing such property from his other property;

(d) the damage that may be sustained by the person interested, at the time of taking possession of the property by the Deputy Commissioner, by reason of the acquisition injuriously affecting his other properties, movable or immovable, in any other manner, or his earnings;

(e) if in consequence of the acquisition of the property, the person interested is likely to be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(f) the damage that may be resulting from diminution of the profits of the property between the date of the service of notice under section 6 and the date of taking possession of the property by the Deputy Commissioner.

(2) In addition of the market value of the property as provided in sub-section (1), the Deputy Commissioner shall in every case award a sum of fifty per centum on such market value in consideration of the compulsory nature of the acquisition.

9. Matters not to be considered in determining compensation : In determining the amount of compensation to be awarded for any property to be acquired under this Part, the Deputy Commissioner shall not take into consideration-

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the persons interested to part with the property to be acquired;

(c) any damage that may be sustained by him which, if caused by a private person, would not render such person liable to a suit;

(d) any damage which is likely to be caused to the property to be acquired, after the date of service of notice under section 6, by or in consequence of the use to which it will be put;

(e) any increase to the value of the property to be acquired likely to accrue from the use to which it will be put when acquired; or

(f) any alteration or improvement in, or disposal of, the property to be acquired, made or effected without the sanction of the Deputy Commissioner after the date of publication of the notice under section 3.

10. Payment of compensation : (1) On making an award under section 7, the Deputy Commissioner shall, before taking possession of the property, tender payment of the compensation awarded by him to the persons entitled thereto according to the award, and shall, unless prevented by some-one or more of the contingencies mentioned in sub-section (2), pay it to them within sixty days from the date of deposit by the requiring person of the estimated amount of compensation under section 7(3).

(2) If the persons entitled to compensation do not consent to receive it, or if there be no person competent to receive the compensation, or if there be any dispute as to title to receive the compensation or as to the apportionment of it, the Deputy Commissioner shall keep the amount of the compensation in a deposit account in the Public account of the Republic which shall be deemed payment for the purpose of taking over possession of the property without any prejudice to the claim of the parties to be determined by the Arbitrator:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 28:

Provided further that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of the compensation awarded under this Part, to pay the same to the person lawfully entitled thereto.

10A. Payment of compensation to bargadar : Notwithstanding anything contained in this Ordinance, when the property acquired under this Part contains standing crops cultivated by bargadar, such portion of the compensation as may be determined by the Deputy Commissioner for the crops shall be paid to the bargadar in cash.

Explanation: In this section 'bargadar' means a person who under the system generally known as adhi, barga or bhag cultivates the land of another person on condition of delivering a share of produce of such land to that person.

11. Acquisition and possession : (1) When the compensation mentioned in the award has been paid or is deemed to have been paid in pursuance of section 10, the property shall stand acquired and vest absolutely in the Government free from all encumbrances, and the Deputy Commissioner shall thereupon take possession of the property.

(2) Immediately after the acquisition of the property under sub-section (1), a declaration by the Deputy Commissioner in the prescribed form to that effect shall be published in the Official Gazette.

12. Abatement or revocation of acquisition proceedings : (1) Notwithstanding anything contained in this Ordinance, where in any case the estimated amount of compensation has not been deposited by the requiring person for acquisition of any property under section 5 within the period specified in section 7(4), all proceedings in respect of such acquisition shall, on the expiry of that period, stand abated and a declaration by the Deputy Commissioner to that effect shall be published in the Official Gazette.

(2) The Deputy Commissioner may, with the prior approval of the Government, by notification in the Official Gazette, revoke all proceedings in respect of acquisition of any property at any time before the payment of compensation.

(3) When any proceedings stand abated or are revoked, the Deputy Commissioner shall make an award determining the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder and the costs reasonably incurred by him in the prosecution of the proceedings under this Part relating to the said property and shall pay the compensation accordingly.

13. Acquisition of part of a house or building : The provisions of this Part shall not be applied for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building should be so acquired:

Provided that the owner may, at any time, before the Deputy Commissioner has made his award under section 7, by notice in writing withdraw or modify his expressed desire that the whole of such house, manufactory or building should be so acquired:

Provided further that, if any question arises as to whether any property proposed to be under this Part does not form part of a house, manufactory or building within the meaning of this section, the decision of the Deputy Commissioner shall be final.

14. Acquisition of property at the cost of a person other than the Government : Where the provisions of this Part are applied for acquiring any property at the cost of any fund controlled or managed by a person other than the Government, the charges of and incidental to such acquisition shall be defrayed from or by such fund or person.

15. Transfer of acquired land to the requiring person other than the Government : (1) When any property is proposed to be acquired for any person other than the Government, such person shall enter into an agreement with the Government in such form as may be prescribed before a notice under section 3 is published.

(2) When the property in respect of which an agreement has been entered into with a person under sub-section (1) is acquired under section 11, the Government shall, on the performance by such person of his part of the agreement, transfer the property to the person by executing a deed in such form as may be prescribed and in accordance with law for the time being in force.

16. Recovery of compensation in certain cases : When any compensation is paid in excess of the amount payable or when any compensation is paid to a person other than the rightful owner, the amount of such excess or wrong payment shall be recoverable as a public demand.

17. Use of acquired property : (1) No property acquired under this Part shall, without the prior approval of the Government be used for any purpose other than the purpose for which it is acquired.

(2) If any acquiring person uses any acquired property in contravention of the provisions of sub-section (1), or does not use it for the purpose for which it is acquired, he shall be liable to surrender the property to the Deputy Commissioner on being directed by him to do so.

Part III
Requisition

18. Requisition of property : (1) When any property is required temporarily for any public purpose or in the public interest, the Deputy Commissioner may, with the prior approval of the Government, by order in writing, requisite it:

Provided that no such approval shall be necessary in the case of emergency requirement of any property.

Provided further that, save in the case of emergency requirement for the purposes of maintenance of transport or communication system, no property which is bona fide used by the owner thereof as the residence of himself or his family or which is used either for religious worship by the public or as an educational institution or orphanage or as a hospital, public library, graveyard or cremation ground shall be requisitioned.

(2) Where an order made under sub-section (1) has been served, the Deputy Commissioner may take possession of the requisitioned property-

(a) in the case of emergency requirement for the purpose of maintenance of transport or communication system, at any time after the date of service of the order,

(b) in any other case, after the expiry of thirty days from the date of service of the order,

and may use the property for the purpose for which it has been requisitioned.

(3) Except with the prior approval of the Government, no property shall be kept under requisition for a period exceeding two years from the date of taking over of possession of such property.

19. Revision : The Government may, of its own motion or on application filed by an aggrieved person, revise an order made under section 18(1):

Provided that no such application shall be entertained unless it is filed within thirty days from the date of service of the order.

20. Award of compensation by the deputy commissioner : (1) Where any property is requisitioned under this Part, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles set out in this section.

(2) The Deputy Commissioner shall, after giving the persons interested an opportunity of being heard in respect of their respective interests in the property an the amount and particulars of their claims to compensation for such interests and having regard to the provisions of sub-section (5), make an award of–

(a) the compensation in the manner as may be prescribed; and

(b) the apportionment of the said compensation among all the persons known or believed to be interested in the property, of whom, or of whose claims, he has information.

(3) The award made by the Deputy Commissioner shall, except as hereinafter provided, be final.

(4) The Deputy Commissioner shall give immediate notice of his award to the persons interested.

(5) The amount of compensation payable for the requisition of any property shall consist of ñ

(a) a recurring payment, in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum, if any, as may be found necessary to compensate the persons interested for all or any of the following matters, namely:-

(i) expenses on account of vacating the requisitioned property;

(ii) expenses on account of reoccupying the property upon release from requisition; and

(iii) damages, other than normal wear and tear, caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(6) Where ant property is kept under requisition for more than two years, the Deputy Commissioner shall revise his award regarding the amount payable as compensation under sub-section (5)(a).

21. Payment of compensation : (1) On making an award under section 20, the Deputy Commissioner shall tender payment of the compensation awarded by him to the persons entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in sub-section (2).

(2) If the persons entitled to compensation do not consent to receive it, or if there be no person to receive the compensation, or if there be any dispute as to the title to receive the compensation, or as to the apportionment of it, the Deputy Commissioner shall keep the amount of the compensation in a deposit account in the Public Account of the Republic which shall be deemed payment of the

compensation for the requisitioned property without any prejudice to the claim of the parties to be determined by the Arbitrator.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 28.

Provided further that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Part, to pay the same to the person lawfully entitled thereto.

22. Recovery of money from allottees of requisitioned property : Where any requisitioned property is allotted to, and placed in possession of, any person, the Deputy Commissioner may recover from such person such amount of money and in such manner as may be prescribed.

23. Repair of requisitioned property : (1) During the period of requisition, the Deputy Commissioner shall be responsible for the proper maintenance of the requisitioned property.

(2) If the Deputy Commissioner is satisfied that repairs are necessary to prevent deterioration to the property, he may, after giving the owner an opportunity of making the repairs himself, cause the repairs to be made at a cost not exceeding one-sixth of the compensation payable to the owner and such cost shall be recovered out of such compensation.

24. Release from requisition : (1) Where any requisitioned property is to be released from the requisition, the Deputy Commissioner may restore it to the person from whom the property was requisitioned or to his successor-in-interest or to such other person as my appear to the Deputy Commissioner to be entitled to such restoration.

(2) The delivery of possession of the requisitioned property to the person referred to in sub-section (1) shall be a full discharge of the Deputy Commissioner from all liability in

respect of such delivery, but shall not prejudice any right in respect of the property which any other person may be entitled by the process of law to enforce against the person to whom possession of the property is so delivered.

Provided that when the person to whom the requisitioned property is to be restored on release from requisition willfully neglects or refuses to take delivery of the requisitioned property on being directed in writing to take possession of such requisitioned property by the Deputy Commissioner, such requisitioned property shall be deemed to have been restored to such person within the meaning of this sub-section with the date and time specified in the aforesaid direction.

(3) Where the person to whom the possession of the requisitioned property is to be delivered cannot be found and has no agent or other person empowered to accept the delivery on his behalf, the Deputy Commissioner shall cause a notice declaring that the property is released from requisition to be affixed on some conspicuous part of the property and shall also publish the notice in the Official Gazette.

(4) Where a notice referred to in sub-section (3) is published in the Official Gazette, the property specified in such notice shall cease to be subject to requisition from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the Deputy Commissioner shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

25. Eviction of allottees : Notwithstanding anything contained in any other law for the time being in force, if any property under requisition, which has been allotted to any person or is in unauthorised occupation of any person, is required by the Deputy Commissioner for any other use or purpose during the period of requisition or for restoring the property under section 24 on its released from requisition, or if the allottee of such property has defaulted in payment of any sum due from him in respect of such property, the Deputy Commissioner, may, at any time by order in writing, direct such person or allottee to vacate the property by such date as

may be specified in the order, and if such person or allottee does not vacate the property by the date so specified, the Deputy Commissioner may evict such person or allottee from such property or may use or caused to be used such force for the purpose as may be necessary.

26. Part not to apply to cantonment : Nothing in this Part shall apply to any property within the limits of a cantonment.

Part IV
Arbitration

27. Appointment of Arbitrator : For the purposes of this Ordinance the Government shall, by notification in the Official Gazette, appoint a Judicial Officer, not below the rank of Subordinate Judge, to be arbitrator for such area as may be specified therein.

28. Application to Arbitrator : (1) Any person interested who has not accepted any award made by the deputy Commissioner under this Act may, within forty five days from the date of service of notice of the award, make an application to the Arbitrator for revision of the award.

(2) The application shall state the grounds on which objection to the award is taken.

(3) The requiring person shall be made a necessary party in the application made under sub-section (1), along with the Deputy Commissioner.

29. Notice for hearing : The Arbitrator shall, on receipt of an application under section 28, cause a notice specifying the date on which he will proceed to hear the application, and directing their appearance before him on that day, to be served on the following persons, namely:

(a) the applicant;

(b) all persons interested in the objection;

(c) the Deputy Commissioner; and

(d) the requiring person.

30. Scope of proceedings : The scope of the enquiry in every proceedings before the Arbitrator shall be restricted to a consideration of the interest of the persons affected by the objection.

31. Arbitrator to be guided by sections 8, 9 and 20 : In determining the amount of compensation to be awarded for any property acquired or requisitioned under this Act, the Arbitrator shall be guided by the provisions of section 8 and 9 or 20, as the case may be.

Provided that the compensation determined by the Arbitrator in respect of each owner shall not exceed the amount specified in the award of the Deputy Commissioner by more than ten per centum.

32. Form of award of Arbitrator : (1) Every award under this Part shall be in writing signed by the Arbitrator, and shall specify the amount awarded under different clauses of section 8(1) or section 20(5), as the case may be, together with the grounds of awarding each of the said amounts.

(2) Where the amount of compensation determined by an Arbitrator is higher than the amount specified in the award of the Deputy Commissioner, an additional compensation at the rate of ten percent per annum on such additional amount shall, subject to the decision of an Appellate Tribunal, if any, be payable till the amount is paid or offered for payment.

(3) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgement within the meaning of section 2(2) and section 2(9) respectively of the Code of Civil Procedure, 1908 (V of 1908).

33. Costs : Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

34. Appeal against the award of arbitrator : (1) An appeal shall lie to the Arbitration Appellate Tribunal, constituted under sub-section (2), against an award of the Arbitrator.

(2) The Government shall, by notification in the Official Gazette, constitute one or more Arbitration Appellate Tribunals for such area as may be specified therein.

(3) An Arbitration Appellate Tribunal shall consists of a member who shall be appointed by the Government from among persons who are or have been District Judges.

(4) A decision of the Arbitration Appellate Tribunal shall be final.

(5) Where the amount of compensation determined by an Arbitration Appellate Tribunal is higher than the amount specified in the award of the Arbitrator, an additional compensation at the rate of ten percent per annum on such additional amount shall be payable till the amount is paid or offered for payment.

Provided that the compensation determined by the Arbitrator Appellate Tribunal in respect of each land owner shall not exceed the amount specified in the award of the Arbitrator by more than ten per centum.

34A. Payment of additional compensation : Where additional compensation is required to be paid in pursuance of an award under this Part, such compensation shall be paid to the persons entitled thereto immediately after the said additional amount is deposited by the requiring person with the Deputy Commissioner:

Provided that the requiring person shall deposit the additional amount with the Deputy Commissioner within one month from the date of receipt of notice in this behalf from the Deputy Commissioner:

Provided further that the Deputy Commissioner shall send the notice to deposit the amount of additional compensation within one month from the date of the award of the Arbitrator, or, as the case may be, decision of the Arbitration Appellate Tribunal.

35. Act X of 1940 not to apply : Nothing in the Arbitration Act, 1940 (X of 1940), shall apply to arbitrations under this Part.

Part V

Miscellaneous

36. Deputy Commissioner and Arbitrator to have certain powers of civil court : The Deputy Commissioner and the Arbitrator, while holding any enquiry or proceedings under this Act, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of-

(a) summoning and enforcing the attendance of any person, and examining him on oath;

(b) compelling the production of any document or record;

(c) reception of evidence on affidavit;

(d) issuing commission for examination of witnesses;

(e) requisitioning any public record from any court or office.

37. Power to enter and inspect : (1) With a view to acquiring or requiring any property or determining the compensation payable in respect thereof or securing compliance with an order made under this Ordinance, the Deputy commissioner or any officer, generally or specially authorised by the deputy Commissioner in this behalf, and any of the assistants and workmen may

(a) enter upon and survey and take levels of any property;

(b) inspect any property or any thing therein;

(c) measure and set out the boundaries and prepare a plan of any property and the intended line of the work, if any, proposed to be made thereon;

(d) mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and boundaries and line marked, cut down and clear away any part of the standing crop, tree or jungle:

Provided that no person shall enter upon any property without the consent of the occupier thereof unless at least

twenty-four hours' previous notice in writing of his intention to do so has been given.

(2) The Deputy Commissioner or the officer authorised by him under sub-section (1) shall, at the time of entry upon any property, pay or tender payment for all necessary damage to be done in such property, and, in case of dispute as to the sufficiency of the amount so paid or tendered, the decision of the Deputy Commissioner shall be final.

38. Power to obtain information : With a view to acquiring or requiring any property or determining the compensation payable in respect thereof, the Deputy commissioner may, by order in writing, require any person to furnish to such officer or authority, as may be specified in the order, such information in his possession as may be specified relating to any property which is acquired or requisitioned, or intended to be acquired or requisitioned, under this Ordinance.

39. Service of notice and orders : (1) Save as otherwise expressly provided in this Ordinance and subject to rules made thereunder, every notice or order issued or made under this Ordinance shall be served by delivering or tendering it to the person named therein or the person whom it is required to be served under this Ordinance.

(2) When such person cannot be found or the notice or order cannot be so delivered or tendered, the service of the notice or order may be made by delivering or tendering it to any officer of such person or to any adult male member of the family of such person residing with him or, if no such officer or member cannot be found, by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person ordinarily resides or carries on business or personally works for gain, and also by affixing a copy thereof in some conspicuous place in the office of the authority or officer issuing or making it and, where possible, in some conspicuous part of the property to which it relates:

Provided that, if such authority or officer so directs, the notice or order may be sent by registered post in a letter addressed to the person named therein or on whom it is required to be served, at his known residence, address or place of business or work.

40. Penalty : Any person who contravenes or attempts to contravene or abets or attempts to abet a contravention of any order made under this Ordinance or who willfully obstructs any person in doing any of the acts authorised or permitted under this Ordinance or any rule made thereunder shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand taka, or with both.

41. Enforcement of surrender : If the Deputy Commissioner is opposed or impeded in taking possession of any property under this Ordinance, he shall enforce the surrender of the property to himself, and may use or cause to be used such force as may be necessary.

42. Exemption from stamp duty and fees : No award made under this Ordinance shall be chargeable with stamp duty, and no person claiming any interest under any such award shall be liable to pay any fee for a copy of the same.

43. Indemnity : No suit, prosecution or other legal proceeding shall lie against any person for any thing which is in good faith done or intended to be done in pursuance of this ordinance or any order or rule made thereunder.

44. Bar to jurisdiction of Court : Save as otherwise expressly provided in this Ordinance, no Court shall entertain any suit or application against any order passed or any action taken under this Ordinance, and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance.

45. Delegation of powers : The government may, by order notified in the Official Gazette, direct that any power conferred or any duty imposed on it by this Ordinance shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised or discharged also by such officer or authority as may be so specified.

The adhoc exercise of the power by the delegator himself for a particular case doesn't necessarily terminate the authority of the delegatee from exercising the power.

46. Power to make rules : (1) The government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:-

(a) the procedure to be followed in taking possession of any property acquired or requisitioned under this Ordinance;

(b) the procedure to be followed by the Arbitrators and the Arbitration Appellate Tribunals;

(c) the manner of enforcement of surrender of any property under section 41;

(d) any other matter which has to be or may be prescribed.

47. Special savings relating to expired EB Act xiii of 1948 : Notwithstanding the cessation of the Emergency Requisition of Property Act, 1948 (EB Act XIII of 1948), on the expiry of the period of its operation, all proceedings and matters, including all notices, notifications and orders, relating to requisition or acquisition of any property or compensation or award in respect of any property requisitioned or acquired and all applications and appeals pending before any authority, arbitrator or court under that Act shall be continued, enforced, heard or disposed of as if that Act had not ceased to have effect and were continuing in operation.

48. Repeals and savings : (1) The Land Acquisition Act, 1894 (I of 1894), is hereby repealed.

(2) Notwithstanding such repeal, all proceedings and matters, including all notices, notifications and orders, relating to requisition or acquisition of any property or compensation or award in respect of any property requisitioned or acquired and all applications and appeals pending before any authority, arbitrator or court under the said Act shall be continued, enforced, heard or disposed of as if this Ordinance had not been made and promulgated.

(3) Subject to the provisions of sub-section (2), the provisions of the General Clauses Act,1897 (X of 1897), shall apply to the repeal and re-enactment of the said Act by this Ordinance.

The Acquisition of Immovable Property Rules,1982

No. SRO 172-L/82:- In exercise of the powers conferred by section 46 of the Acquisition & Requisition of Immovable Property Ordinance,1982 (II of 1982), the Government is pleased to make the following rules, namely:-

1. Short title : These rules may be called the Acquisition of Immovable Property Rules,1982.

2. Definitions : In this rules, unless there is anything repugnant in the subject or context,-

(a) "Form" means a Form appended to these rules;

(b) "Ordinance" means the Acquisition & Requisition of Immovable Property Ordinance,1982 (II of 1982); and

(c) "section" means a section of the Ordinance.

3. Proceedings for acquisition : There shall be a separate proceeding for each proposal of acquisition under the Ordinance.

4. Notices under sections 3, 6 and 7 : (1) The notices under sections 3, 6 and 7 shall be in Forms 'A', 'B' and 'C' respectively.

(2) The notices under sections 3 and 6 shall be affixed at convenient places on or near the property sought to be acquired, with copies of such notices displayed, in the Notice Boards of the Collectorate, Office of the Upazila Revenue Officer, Tahsil Office and Office of the Local Parisad or Paurashava within the local limits of which such property situates.

5. Declaration of acquisition and possession : The declaration regarding acquisition and possession of property under section 11 shall be made in Form-D.

6. Declaration of abatement and revocation of proceedings : The declaration of abatement of acquisition proceedings under sub-section (1) of section 12 shall be made

in Form-E and the notification required to be issued under sub-section (2) of the said section shall be made in Form-F.

7. Transfer of acquired land : (1) When an acquired land is proposed to be transferred to any person other than the Government under sub-section (1) of section 15, such person shall, subject to sub-rule (2), enter into an agreement with the Government in Form-G.

(2) A deed of transfer in Form H shall be executed for transfer of the property to any person other than the Government and such person shall be liable to pay stamp-duty and other charges incidental to such execution in accordance with the existing laws for the time being in force.

8. Assessment of compensation : (1) Subject to the provisions of sections 8 and 9, in determining the compensation, the following matters and circumstances shall also be considered:-

(a) the nature and condition of the property, and

(b) the prevailing letting value, if any, of similar property in the locality.

(2) In calculating the market value of any property for the purpose of clause (a) of sub-section (1) of section 8, in the case of land, the average value of per acre of land transferred shall be calculated from the total amount of sale figures divided by the total quantity of land transferred.

(3) In case of acquisition of any building, including pucca or kutcha, the market value shall be determined keeping in view the cost of construction, cost on development of land including approaches and depreciation of building in consultation with public works department.

9. Unutilised acquired property : The Deputy Commissioner will submit a statement to the Government annually about the properties acquired for different requiring persons and mode of utilisation of the land. Such statement shall be submitted by the 15th July of each year.

FORM- A

[See sub-rule (1) of rule 4]

Acquisition Case No. .... **of 19** ....

Date of issue :

NOTICE

Whereas the property described in the schedule below is needed or is likely to be needed for the public purpose of ....and in the public interest;

Now, therefore, in pursuance of the provisions of section 3 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982), it is hereby notified for the information of all concerned that the said property is proposed to be acquired by the Government.

Any persons interested in the said property may, within 15 days after the publication of the notice, file objection against the proposed acquisition of the property to the undersigned.

The Schedule

Plot No./Nos., : ....

Khatian No./Nos., : ....

Mouza : ....

PS : ....

Total area : ....

Deputy Commissioner

Dated the .... 19....... .... District

FORM- B

[See sub-rule (1) of rule 4]

Acquisition Case No. .... of 19 ....

NOTICE

To : .... owner/ occupier/ interested persons in the property.

Notice is hereby given as required under section 6 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982), that the Government has decided to acquire

the property described in the schedule below and intends to take possession thereof.

The owner/ occupier/ interested persons in the property is/are hereby called upon to appear personally or by authorised agent before the undersigned on .... (date) at the office of .... at .... (time) to–

(1) state the nature of the respective interests in the said property and particulars of their claims for such interests; and

(2) make or deliver a statement containing so far as may be practicable, the name of every other person possessing any interest in the said property or any part thereof as co-sharer, mortgagee or otherwise, and of the nature of such interest and profits, if any, received or receivable on account thereof.

The Schedule

Plot No./Nos., :..............................

Khatian No./Nos., : ....

Mouza : ....

PS : ....

Total area : ....

Deputy Commissioner

Dated the .... 19...... ....District

FORM- C

[See sub-rule (1) of rule 4]

Acquisition Case No. .... of 19 ....

NOTICE

To : ....

Notice is hereby given as required under sub-section (3) of section 7 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982) that you have been

treated s the person/persons interested in the above case and in my opinion compensation at the following rates be allowed to you:

Compensation for land per acre @ Tk. ....total Tk......................

Compensation for structure @ Tk. ....total Tk......................

Compensation for other property @ Tk. ....total Tk......................

Total Tk. :

The sum payable to you is Tk. .... You should appear before me personally or by a duly authorised agent on or before......................... (date) for receiving the payment.

Deputy Commissioner

Dated the .... 19...... .... District

FORM- D

[See rule 5]

Acquisition Case No. .... of 19 ....

DECLARATION

Whereas the property described in the schedule below has been decided to be acquired and compensation therefor has been paid or is deemed to have been paid in pursuance of section 10 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982):

Now, therefore, in pursuance of sub-section (2) of section 11 of the said Ordinance, I am pleased to declare that the said property stands acquired and vests absolutely in the Government free from all encumbrances:

The Schedule

Plot No./Nos., :..
Khatian No./Nos., : ....
Mouza : ....
PS : ....
Total area : ....

Deputy Commissioner
Dated the .... 19....... .... District

FORM- E

[See rule 6]

Acquisition Case No. .... of 19 ....

DECLARATION

Whereas compensation has not been paid or deposited within a period of one year from the date of decision of the Government for acquisition of the property described in the schedule below for the no fault of the persons interested;

Now, therefore, in pursuance of sub-section (1) of section 12 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982), I am pleased to declare that the all proceedings in respect of such acquisition stand abated from (date).

The Schedule

Plot No./Nos., :..
Khatian No./Nos., : ....
Mouza : ....
PS : ....
Total area : ....

Deputy Commissioner
Dated the .... 19....... .... District

FORM- F

[See rule 6]

Acquisition Case No. .... of 19 ....

NOTIFICATION

Whereas acquisition proceedings were started in case No. ...... of 19.......... for acquisition of the property described in the schedule below under the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982), but compensation thereof has not yet been paid.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 12 of the aforesaid Ordinance, I, with the prior approval of the Government, revoke all the proceedings in respect of acquisition of the said property.

The Schedule

Plot No./Nos., :..
Khatian No./Nos., : ....
Mouza : ....
PS : ....
Total area : ....

Deputy Commissioner
Dated the .... 19....... .... District

FORM- G

[See rule 7]

Acquisition Case No. .... of 19 ....

AGREEMENT

Whereas the property described in the schedule below is required by us for and it is necessary to initiate proceedings for acquisition of the said property under the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982);

Now, therefore, we the requiring persons hereby agree and undertake to abide by the requirements of the aforesaid Ordinance and to pay the compensation and other charges for the said property.

We also undertake to follow all such terms and conditions as may be determined by the Government in this behalf.

This agreement is made on the day of . 19..

The Schedule

Plot No./Nos., :.................................
Khatian No./Nos., : ....
Mouza : ....
PS : ....
Total area : ....

Name and signature of witnesses with adress	Name and signature of the requiring persons with address.
1.	1.
2.	2.
3.	3.

FORM- H

[See sub-rule (2) of rule 7]

This INDENTURE is made this .... Day of ....19 .... between the Government of Bangladesh (hereinafter called the Government) on the one part and .... having its office at ....in .... (hereinafter called the requiring person) on the other part;

Whereas in the month of .... The requiring person applied to the Deputy Commissioner .... to acquire the property/properties hereinafter described under the provisions of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982) for the establishment of .... and the Government being satisfied that the proposed acquisition was needed for the aforesaid purpose and that the said work was likely to prove useful to the public, consented to acquire on behalf of the requiring person the property hereinafter described;

And whereas pursuant to the provisions of section 15 of the Ordinance the requiring person entered into an Agreement with the Government on ....whereby it was agreed, inter

alia, that the requiring person shall pay to the Government all compensation and other charges for the said property;

And whereas the Deputy Commissioner .... having duly made an award of compensation under section 7 of the said Ordinance and took possession under section 11 of the properties which thereupon vested absolutely in the Government free from all encumbrances;

And whereas on the .... day of .... 19 .... possession of the said property was made over to the Deputy Commissioner .... to the requiring person;

And whereas the requiring person has deposited with the Deputy Commissioner on ....the sum of Tk ....) being amount so far demanded, and whereas the requiring person admits its liability to pay any further sum demanded;

Now, this INDENTURE witnesseth that in pursuance of the said Agreement the Government doth hereby grant lease unto the requiring person ALL THAT property/piece or parcel of land more particularly delineated in the plan hereunto annexed and described in the schedule TO HOLD unto the requiring person with usual rent/taxes as may be fixed by the Revenue Authority and it is hereby agreed and declared that if at any time hereafter the said property/premises shall (except with the sanction in writing of the Government) be used by the requiring person for any purpose, other than the .... or purposes incidental thereto or if the said property for a period of .... consecutive months cease to be held and used or cease to be required for such purpose the requiring person shall surrender the said property and the Government may re-enter upon and take possession of the said premises together with all buildings thereon which shall thereupon vest in the Government absolutely;

And the Government may either sell the said premises and buildings thereon and upon such sale the Government shall after deducting the expenses of taking possession and selling, pay the balance of the said proceeds of sale to the requiring person or the Government may retain the said premises together with all buildings there in which case the Government shall repay to the requiring person all sums

received from the requiring person in respect of the aforesaid premises as compensation (less the statutory allowance of 20 per cent and less any amount received from the requiring person on account of trees and buildings which are not in existence at the time of resumption) but not sums received on account of costs, charges and expenses;

Should any dispute or difference arise concerning the subject matter of the deed or any convenient clause or thing herein contained, the same shall be referred to the Government and the decision of the Government upon such dispute or difference shall be final and conclusive and binding on the parties hereto.

The schedule above referred to:

All that piece of land situated in the ...., district ...., PS.................., Mouza................, JL No. ...., containing an area of................ acres comprising CS, SA, RS Plot Nos.................

bounded on the-

North-

East-

South-

West-

In witness thereof the said requiring person has caused its common seal to be affixed and the Government hath hereto set his hand and seal this day and year first above written.

The common seal of the above named .... Requiring person was hereto affixed in the presence of .... witness.

Head of office/Chief Executive Officer
With seal

Signed, sealed and delivered by .... The Deputy Commissioner of .... On behalf of the Government of the People's Republic of Bangladesh.

(Witness)

(Signature)

Deputy Commissioner
.... District.

The Requisition of Immovable Property Rules, 1982

No. SRO 372-L/82:- In exercise of the powers conferred by section 46 of the Acquisition & Requisition of Immovable Property Ordinance, 1982 (II of 1982), the Government is pleased to make the following rules, namely:-

1. Short title : These rules may be called the Requisition of Immovable Property Rules, 1982.

2. Definitions : In this rules, unless there is anything repugnant in the subject or context,-

(a) "Form" means a Form appended to these rules;

(b) "Ordinance" means the Acquisition & Requisition of Immovable Property Ordinance, 1982 (II of 1982); and

(c) "section" means a section of the Ordinance.

3. Proceedings for requisition : There shall be a separate proceeding for each proposal of requisition under the Ordinance.

4. Order of requisition : The order of requisition under sub-section (1) of section 18 shall be in Form 'A'.

5. Assessment of compensation on requisition : (1) In making the award of compensation, the deputy Commissioner shall, besides taking into consideration, the principles laid down under section 20, see that-

(a) the owner receives such compensation in cash of which he is temporarily deprived; and

(b) in case the property is a cultivable land the owner receives the compensation for loss of crops.

(2) in determining compensation for standing crops average yield per acre in the locality of the kind of produce multiplied by price of the products per unit shall be calculated.

6. Recovery of compensation money from the allottees: When any requisitioned is allotted to and placed in possession of any person the Deputy Commissioner shall realise estimated mount of compensation from such person in such installment as he my deem fit.

7. Notice of release of requisition : The notice of release of requisition as required under sub-section 3 of section 24 shall be in Form 'B'.

FORM- A

[See rule 4]

Requisition Case No. ....

Order of Requisition of Immovable Property

Whereas, it is expedient to requisition the immovable property described in the schedule 'A' below for the purpose of ....and in the public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 18 of the Ordinance, I do thereby requisition the said property and direct that-

Mr./Mrs .... (name) .... of ....(address) .... owner/occupier of the said property shall-

(a) deliver the possession of the said property to an officer authorised by me to receive the possession on my behalf on ....

(b) remove from the said property the movable properties in the Schedule 'B' below or any other movable properties as may be specified in writing in this behalf by the officer authorised by me;

(c) not dispose of the said property in any way which may disturb or interfere with the use or the dealing of the said property in the manner described by me so long as this order remains in force.

SCHEDULE 'A'

SCHEDULE 'B'

Deputy Commissioner
.... District

Dated the .... 19.......

FORM- B

[See rule 7]

Notice under section 24(3) declaring release of acquisitioned property, when the owner is not found.

Whereas the property described in the Schedule below was requisitioned vide Order No. .... dated .... under section 18 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982);

And whereas it has been decided to release the said property from such requisition.

And whereas Mr./Mrs. ....is/are entitled to take possession of the said property;

And whereas the aforesaid person/persons cannot be found and he has/they have no agent or other person empowered to accept delivery of the said property on his/their behalf;

Now therefore, in exercise of the powers conferred by sub-section (3) of section 24 of the aforesaid Ordinance, it is hereby declared that the said property is released from requisition.

SCHEDULE

Deputy Commissioner
.... District

Dated the .... 19.......

THE AGRICULTURAL LABOUR (MINIMUM WAGES) ORDINANCE, 1984

(Ordinance No. XVII of 1984)

[22nd February, 1984]

An Ordinance to provide for fixation of minimum rates of wages for agricultural labourers.

Whereas it is expendient to provide for fixation of minimum rates of wages for agricultural labourers and for matters ancillary thereto;

Now, therefore, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

1. Short title.-This Ordinance may be called the Argicultural Labour (Minimum Wages) Ordinance, 1984.

2. Definitions.-In this Ordinance, unless there is anything repugnant is the subject or context,—

(a) 'agricultural labourer' means any person employed in agricultural crop production, but does not include—

(i) a person employed by the Government;

(ii) a person employed in a plantation as defined in clause (iii) of section 2 of the Payment of Wages Act, 1936 (IV of 1936);

(iii) a person who works as a family labourer on monthly wages;

(iv) a person employed by a company registered under the Companies Act, 1913 (VII of 1913), engaged in production and sale of fish or livestock of any kind;

(v) a bargadar as defined in the Land Reforms Ordinance, 1984 (X of o1984).

(b) "wages" means all remuneration which would, if the terms of contract of employment, express or implied, were fulfilled, by payable to a person in respect of his employment or work done in such employment, but does not include any sum paid to such person to defray special expenses incurred by him in respect of his employment.

3. Minimum wages for agricultural labour.-(1). The minimum rate of wages for agricultural labour per day shall be 3.27 kilograms of rice or such amount of money as is equal to the price of this quantity of rice in the local market.

(2) The Government may, by notification in the official Gazette, review from time to time the minimum rate of wages fixed under sub-section (1), on the recommendation of the Council of Minimim Wages and Prices for Agricultural Labour constituted under section 4.

(3) The Government may, on review of the minimum rate of wages under sub-section (2), fix different rates of minimum wages for different areas, for different classes of agricultural labourer or different kinds of agricultural labourer.

(4) Notwithstanding anything contained in this section, no rate of minimum wages shall be reviewed earlier than three years from the date on which it was fixed, unless special circumstances so require.

4. Constitution of Council of Minimum Wages and Prices for Agricultural Labour.-(1) The Government may, by notification in the official Gazette, constitute a Council to be called the Council of Minimum Wages and Prices for Agricultural Labour for the purposes of this Ordinance.

(2) The Council shall consist of a Chairman and such number of other members as the Government may deem fit to appoint.

(3) The Council shall, upon a reference made to it by the Government, recommend to the Government, after such enquiry as the Council thinks fit and after consideration of the economic conditions, costs of living and other relevant factors, the minimum rates of wates for agricultural labour.

(4) The Council may, if the circumstances so demand, recommend different rates of minimum wages for different areas, for different classes of agricultural labourer or for different kinds of agricultural labouer.

(5) In making its recommendations, the Council shall take into consideration the views of the Upazila Parishads, if any.

5. Payment of minimum wages.-No person shall pay any agricultural labourer wages at a rate lower than the rate fixed

by or under this Ordinance to be the minimum wages for such labourer.

(2) Nothing in sub-section (1) shall be deemed to affect, in any way, the right of an agricultural labourer to continue to receive wages at a rate higher than the minimum rate fixed by or under this Ordinance, if under any agreement or contract or otherwise, he is entitled to receive wages at such higher rate, or to continue to enjoy such amenities and other advantages as are customary for such labourer to enjoy.

6. Compensation and recovery procedure.-(1) Any person who contravences the provision of section 5 shall be liable to pay to the aggrieved person compensation of an amount not exceeding two times the amount which would have been paid to him had there been no such contravention.

(2) Notwithstanding anything contained in any other law for the time being in force, a suit for recovery of the wages and compensation payable to an agricultural labourer shall lie to a Village Court.

7. Protection of minimum wags.-The minimum rates of wages fixed by or under this Ordinance shall not be called in question in or before any Court or authority.

8. Amendment of Ordinance LXI of 1976.-In the Village Courts Ordinance, 1976 (LXI of 1976), in the Schedule, in Part II, *after* item 5, the following new item shall be *added*, namely:—

"6." Suit for recovery of wages and compensation payable to agricultural labourers."

THE LAND ACQUISITION ACT, 1894

(Act No. 1 of 1895)

[2nd February, 1894]

(As on 13th April 1982, the date of repeal of the Act).

An Act to amend the law for the acquisition of land for public purposes and for companies.

WHEREAS it is expedient to amend the law of the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition :

It is hereby enacted as follows :—

PART 1

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the land Acquisition Act, 1894;

(2) It extends to the whole of Bangladesh; and

(3) It shall come into force on the first day of March, 1894.

2. Repealed.

3. Definition.—In this Act, unless is something repugnant in the subject or context—

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Government to perform the functions of a Collector under this Act;

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Government has appointed (as it is hereby empowered to do) a special judicial officer within

any specified local limits to perform the functions of the Court under this Act;

(e) the expression "Company" means a Company registered under the Companies Act, 1913 or incorporated by any Bangladesh law and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1940;

(f) the expression "Public purpose" includes the provision of village-sites in districts in which the Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision and;

(g) the following persons shall be deemed person "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable shall be deemed the person so entitled to act, and whether of full age or not to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted;

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of Code of Civil Procedure, 1908, Schedule 1, Order XXXII shall, mutatis mutandis, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II
ACQUISITION
Preliminary investigation

4. Publication of preliminary notification and powers of officers thereupon.—(1) Whenever it appears to the Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

5. Payment for damage.—The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

Objections

5A. Hearing of objections.—(1) Any person interested in any land which has been notified under section 4, sub-section (1) as being needed or likely to be needed or a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Government, together with the record of the proceedings held by him and report containing his recommendations on the objections. The decision of the Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

Declaration of intended Acquisition

6. Declaration that land is required for a public purpose.—(1) Subject to the provision of Part VII of this Act, when the Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a Company a declaration shall made to that effect that under the signature of a Secretary to the Government or of some officer duly authorized to certify its orders;

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company as the case may be; and after making such declaration, the Government may acquire the land in manner hereinafter appearing.

7. After declaration, Collector to take order for acquisition.—Whenever any land shall have been so declared to be needed for public purpose or for a Company, the Government or some officer authorized by the Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. Land to be marked out, measured and planned.—The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

9. Notice to persons interested.—(1) The Collector shall then cause public notice to be given at convenient place soon or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed and shall require aoo persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier that

fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interest and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to them by post in a letter addressed to him at his last known residence, address or place of business and registered under [the] Post Office Act, 1898.

10. Power to require and enforce the making of statement as to names and interests.—(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier that fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, mortgage, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Penal Code.

Enquiry into Measurements, Value and Claims, and Award by the Collector

11. Inquiry into award by Collector.—On the day so fixed, or any other day to which the esquire has been adjourned, the Collector shall proceed to esquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 9, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the person claiming the compensation and shall make an award under his land of—

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom or of whose claims, he has information, whether or not they have respectively appeared before him.

12. Award of Collector to be final.—(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. Adjournment of inquiry.—The Collector may, for any cause he thinks fit, from time to time adjourn the inquiry to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents.—For the purpose of inquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

15. Matters to be considered and neglected.—In determining the amount of compensation, the collector shall be guided by the provisions contained in section 23 and 24.

Taking possession

16. Power to take possession,— When the collector has made an award under section 11. he may take possession of the land, Which shall thereupon vest absolutely in the Government, free from all encumbrances.

17. Special powers in cases of urgency.—(1) In cases of urgency, whenever the Government so directs, the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the notice mentioned in section (9), sub-section (1), take possession of any land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the collector shall not take possession of any homestead or building without giving to the occupier thereof at least two months, notice from the date of offer of compensation in advance under section 17A.

(2) Whenever, owing to any sudden change in the channel of any becomes necessary for the Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or that station or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Government enter upon and take possession of such land, which shall thereupon vest absolutely in the government, free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier there of at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary in convenience,

(3) In every day case under either of the preceding sub-sections, the Collector shall at the time of taking possession offer to the persons interested compensation for the standing

crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and , in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in the opinion of the Government, the provisions of sub-section (1) or sub-section (2) are applicable, the Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4. sub-section (1).

17A. Payment of compensation in advance,—Subject to the provisions of section 11.23 and 24. the persons interested shall be offered and, if agreeable , paid in advance, before possession is taken over under section 17, a compensation to the extent of —

(a) 100% for structures and buildings;

(b) 75% for homesteads and orchards;and

(c) 50% for vacant nal lands

on the basis of a provisional estimate prepared by the Collector on rough and ready calculation.

PART III

Reference To Court And Procedure Thereon.

18. Reference to court,—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objections be to the measurement of the land, the amount of the compensation among the persons interested.

(2) The application shall state the ground s on which objection to the award is taken:

Provided that every such application shall be made—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six months from the date of the collector's awards;

(b) in other cases, within six weeds of the receipt of the notice from the collector under section 12, sub-section (2) or within six months from the date of the Collector's award whichever period shall first expire,

19. Collector's statement to the Court, —(1) In making the reference, the collector shall state for the information of the Court in writing under his hand—

(a) The situation and extent of the land, with particulars of any trees, buildings or standing crops thereon:

(b) the name of the persons whom he has reason to think interested in such land;

(c) The amount awarded for damages and paid or tendered under sections 5 and 17, or either of them , and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the ground s on which the amount of compensation was determined .

(2) To the said statement shall be attached a schedule giving the particulars of the notice served upon. and of the statements in writing made or delivered by, the parties interested respectively.

20. Service of notice,— The Court shall thereupon cause a notice specifying the day on which the court will proceed to determine the objection, and directing their appearance before the court on that day, to be served on the following persons, namely:—

(a) the applicant:

(b) all persons interested in the objection, except such if any of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation ,the collector.

21. Restriction on scope of Proceedings.—The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Proceedings to be in open Court.— Every such proceeding shall take place in open Court and all persons entitled to practice in any civil Court in the province shall be entitled to appear, plead and act as the case may in such proceeding.

23. Matters to be considered in determining compensation.— (1)In determining the amount of compensation to be awarded for land acquired under this Act. the Court shall take into consideration—

First, the market-value of the land at the date of the publication of the notification under section-4, sub-section (1) Provided that in determining such market-value, the Court shall take into account the average value of the properties of the similar description and with similar advantages in the vicinity during the twenty-four months preceding the date of publication of the notification under sub-section (1) of section 4;

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of Collector's taking possession of the land, by reason of severing such land from his other land.

Fourthly, the damage(if any sustained by the person interested, at the time of Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

Fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen

per centum on such market-value, in consideration of the compulsory nature of the acquisition;

Provided that where the purpose for which the land is acquired is the establishment of an industry by a person other than the Government, the Court shall, in addition to the market-value of the land, award a sum of twenty-five per centum on the market-value.

24. Matters to be neglected in determining compensation.—But the Court shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the land acquired;

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

Fourthly, any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

Fifthly, any increase to the value of the land of the person interested likely to accrue from the use to which the land acquired will be put; or

Sixthly, any increase of the value of the other land of the person interested likely to accrue from the use to which the land acquired will put; or

Seventhly, any outlay or improvements on, or disposal of, the land acquired commenced; made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1).

25. Rules as to amount of compensation.—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Form of awards.—(1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9) respectively, of the Code of Civil Procedure, 1908.

27. Costs.—(1) Every such award shall also state the amount of costs incurred in the proceedings under this part and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. Collector may be directed to pay interest on excess compensation.—If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector did award as compensation. the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum annum from the date on which he took possession of the land to the date of payments of such excess into Court.

PART IV

Apportionment Of Compensation

29. Particulars of apportionment to be specified— Where there are several persons interested if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of he correctness of the apportionment.

30. Dispute as to apportionment— When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer dispute to the decision of the Court.

PART V

Payment

31. Payment of compensation or deposit of same in Court—(1) On making an award under section 11. the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be not person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which reference under section 18 would be submitted;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18;

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Not with standing anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. Investment of money deposited in respect of land belonging to persons incompetent to alienate.—(1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same, the Court shall—

(a) Order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved secretaries as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) in all case of moneys deposited to which this section applies the Court shall order the costs or the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, merely;

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases.— When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

34. Payment of Interest.—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum form the time of so taking possession until it shall have been so paid or deposited.

PART VI

Temporary Occupation of Land.

35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.—(1) Subject to the provisions of Part VII of this Act, whenever it appears to the Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall for the occupation and use thereof for such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

36. Poser to enter and take possession and compensation on restoration.—(1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein;

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

37. Difference as to condition of land.—In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII

Acquisition of Land for Companies

38. Company may be authorised to enter and survey.— (1) The Government may authorise any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

38A. Industrial concern to be deemed company for certain purpose.—An industrial concern, ordinarily employing not less than one hundred workment owned by an individual or by an association of individuals and not being a company, desiring to acquire land for the creation of dwelling houses for workment employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition such land, be deemed to be a company for the purposes of this part, and the references to company in sections 5A,. 6, 7, 17 and 50 shall be interpreted as references also to such concern.

39. Previous consent of Government and execution of agreement necessary.—The provision of sections 6 to 37 (both inclusive shall not be put in force in order to acquire land for any company, unless with the previous consent of the Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

40. Previous enquiry.—(1) Such consent shall not be given unless the Government be satisfied, either on the report of the Collector under section 5A. Sub-section (2), or by an enquiry held as hereinafter provided.—

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly concerned therewith, or

(b) that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the Government shall appoint.

(3) Such officer may summon and enforce the attendance of witness and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 in the case of a Civil Court.

41. Agreement with Government.—If the Government is satisfied after considering the report, if any, of the Collector under section 5A, sub-section 92) or on the report of the officer making an inquiry under section 40 that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall require the company to enter into an agreement with the government providing to the satisfaction of the Government for the following matter, namely :—

(1) the payment to Government of the cost of the acquisition..

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

42. Publication of agreement.—Every such, as soon as may be after its execution, be published in the official Gazette and shall thereupon (so far as regards the terms on which the

public shall be entitled to use the world have the same effect as if had formed part of this Act.

43. Section 39 to 42 not to apply where Government bound by agreement to provide land for Companies.—The provisions of section 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such company and the Secretary of the Government is, or was, bound to provide land.

44. How agreement between Railway Company and Secretary of State may be proved.—In the case of the acquisition of land for the purposes of Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

PART VII

Miscellaneous

45. Service of notices.—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof singed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dewels or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired;

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under [the] Post Office Act, and service of it may be proved by the production of the addressee's receipt.

46. Penalty for obstructing acquisition of land.—Whoever willfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or willfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty taka, or to both.

47. Magistrate to enforce surrender.—If the Collector is opposed or impeded in taking possession under this Act of any land he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate he shall apply to a magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.—(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

49. Acquisition of part of house or building.—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house; manufactory or building shall be so acquired;

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the

whole of such house, manufactory or building shall be so acquired;

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section 91), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Government to the person interested, and shall thereafter proceed to make his award under section 11.

50. Acquisition of land at cost of a local authority or Company.—(1) Where the provisions of this Act are put in force the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

51. Exemption from stamp-duty and fees.—No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. Notice in case of suits for anything done in pursuance of this Act—No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

53. Code of Civil Procedure to apply to proceedings before Court.—Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the Court under this Act.

54. Appeals in proceeding before Court.—Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court Division from the award, or from any part of the award, of the Court and from any decree of the High Court Division passed on such appeal as aforesaid an appeal shall lie to the Appellate Division subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 and in Order XLV thereof.

55. Power to make rules.—(1) The Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall be published in the official Gazette, and shall thereupon have the force of law.

THE ACQUISITION OF WASTE LAND ACT, 1950

(East Bengal Act XIX of 1950)

[18th May, 1950]

As on 30-6-1994

An Act to provide for the acquisition for public purposes of waste land in Bangladesh

Whereas it is expedient to provide for the acquisition for public purposes of waste land in Bangladesh;

1. Short title and extent—(1) This Act may be called the Acquisition of Waste Land Act, 1950.

(2) It extends to the whole of Bangladesh except any area constituted a municipality under the provisions of the Municipal Administration Ordinance, 1960 (ord. No. X of 1960.)

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context.—

(1) "Collector" includes Deputy Commissioner and such other officers as may be authorised by the Government to perform all or any of the functions of a Collector under this Act;

(2) "waste land" means any land including marshy tracts, water courses, and jungle areas, which has not grown any crop for five consecutive years or m ore immediately preceding the date of publication of the notification under section 3 in respect of such land, but does not include—

(i) any land which has been acquired before such date or has been held from before such date for industrial or building purposes or for the purposes or trade or business;

(ii) any land which has been held from before such date or has been held from before such dae for industrial or building purposes or for the purposes or trade or business;

(ii) any land which has been held from before such date for purposes connected with the cultivation or manufacture of tea;

(iii) any land used for homestead purposes together with any garden appertaining to a homestead;

(3) "person interested" includes all person claiming an interest in compensation to be made on account of the acquisition of any land under this Act;

(4) "public purpose" includes,—

(a) the production of food; or

(b) the aforestation of land; or

(c) the carrying out of irrigation or drainage schemes; or

(d) the provision of sites for the setting up of model villages; or

(e) the reclamation of land for bringing it under cultivation; or

(f) the settlement of land with any person or persons, in order to provide them with a means of livelihood or with holdings of an economic size or in order to enable such person or persons to carry on large farming on a co-operative basis or otherwise by the use of power-driven mechanical appliances;

(5) "prescribed" means prescribed by rules made under this Act.

3. Publication of preliminary notification and powers of officers on the issue of such notification.—(1) Whenever it appears to the Government that any waste land (hereinafter in this Act referred to as land) is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places on or near the land.

(2) Thereupon it shall be lawful for any officer either generally or specially authorised by the Government in this behalf, and for his servants and workmen,

(a) to enter upon and survey and take levels of the lands;

(b) to dig or bore into the sub-soil;

(c) to do all other acts necessary to ascertain whether the land is adapted for such purpose;

(d) to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

(e) to mark such levels, boundaries and line by placing marks and cutting trenches;

(f) and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, cut down and clear away any fence or jungle.

4. Objections.—(1) Any person interested in any land which has been notified under sub-section (1) of section 3, as being needed or likely to be needed for a public purpose may, within fifteen dasys after the issue of the notification, object to the acquisition of the land.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall, after giving the objector an opportunity of being heard and after making such inquiry, if any, as he thinks necessary, submit the case for the decision of the Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

5. Declaration that land is required for a public purpose.—(1) When the Government is satisfied, after considering the report, if any made under sub-section (2) of section 4, that the land is needed for a public purpose, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officers duly authorised to certify its orders.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim

an interest in compensation if the land were acquired under this Act.

6. Order for acquisition.—Whenever any land shall have been so declared to be needed for a public purpose the Government or some officers authorised by the Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

7. Notice to persons interested.—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken stating that the Government, intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements of the land. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein as reside or have agents authorised to receive service on their behalf, within the district in which the land is situated.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him at his last known residence, address or place of business.

8. Power to require and enforce the making of statements as to names and interests.—(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier that fifteen days after the date of the requisition), a statement

containing so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, tenure-holder, mortgagee, tenant or otherwise, the nature of such interest and the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 7 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Penal Code (Act XLV of 1860).

9. Power to take possession.—At any time after the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of section 7, the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free all encumbrances.

10. Enquiry and award by Collector.—(1) On the day fixed under sub-section (2) of section 7 or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 7 to the measurements of the land and into the respective interests of the persons claiming the compensation and the amount and particulars of their claims, and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed under section 12; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

(2) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence as between the Collector and the person interested, whether they have respectively appeared before the Collector or

not, of the true area and value of the land, the apportionment of the compensation among the persons interested.

(3) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

11. Power to summon and enforce attendance of witnesses and production of documents.—For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and so far as may be in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).

12. Principles of determining compensation.—In determining the amount of compensation the Collector shall be guided by the following provisions, namely;

(a) the land does not yield any income, the immediate owner of the land shall receive compensation at the rate of rupees ten per acre;

(b) If the land yields any income, the immediate owner of the land shall get compensation of an amount equivalent to five times the annual income to be determined in the manner prescribed or ten times the annual rent paid by occupancy raiyats for an equal area of cultivated land in the neighborhood which the Collector may select as being appropriate for the purpose, whichever is greater; in either case, the superior landlords shall get compensation of an amount equivalent to ten times their respective net annual incomes from such land determined in the prescribed manner on the basis of the rental value of such land.

13. Apportionment of compensation.—(1) Where there are several persons interested, if such persons agree to the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between

such persons the award shall be conclusive evidence of the correctness of the apportionment.

(2) When the amount of compensation has been settled under section 10, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector shall decide such dispute subject to rules made under this Act before making the award under sub-section (1) of that section.

14. Special powers in case of urgency.—In cases of urgency, the Government may direct that the provisions of section 4 shall not apply, and if it does so direct, a declaration may be made under section 5 in respect of the land at any time after the publication of the notification under sub-section (1) of section 3.

15. Appeal.—(1) Any person interested who has not accepted the award made by the Collector or the decision of the Collector regarding the amount of compensation payable under sub-section (2) of section 24 may, in the manner prescribed, prefer an appeal, within six weeks of the date of such award or decision, to the prescribed authority whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested or the decision under sub-section (2) of section 24.

(2) The decision of the prescribed authority shall be final.

16. bar to jurisdiction of Civil Courts.—No civil Court shall entertain any suit in respect of any matter arising out of any proceedings under this Act.

17. Modification of the award according to the decision of the appellate authority.—When all appeals under section 15 against the award of the Collector have been disposed of, the decisions of the appellate authority together with the records of the cases shall be forwarded to the Collector who shall thereupon modify the award according to such decisions.

18. Payment of compensation.—The compensation awarded shall be paid by the Collector subject to such rules as may be made in this behalf under this Act.

Provided that nothing contained in this Act or in any rules made thereunder shall affect, the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

19. Investment of money awarded in respect of land belonging to person incompetent to alienate.—(1) If the Land, in respect of which any money is awarded, belonged to any person who had no power to alienate the same, it shall be kept in deposit with the Collector and be invested in such manner as the Collector thinks fit; and the person or persons who would for the time being have been entitled to the possession of the said land shall be entitled to receive the interest or other proceeds arising form such investment and the said money shall remain so deposited and invested until the same be applied in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the cost of such investment including all reasonable charge and expenses incidental thereto and such other costs as may be prescribed shall paid by the Collector.

20. Payment of interest.—When the amounts of compensation awarded is not paid, or is not deposited under sub-section (1) of section 19, on or before the date on which possession is taken of the land the Collector shall when paying or depositing such amount also pay or deposit as the case may be, interest thereon at the rate of three per centum per annum from such date, until the date on which such amount is paid or so deposited;

Provided that such interest shall not be payable in the case where the persons entitled to the amount of compensation do not consent to receive it or where there is any dispute as to the title to receive it or to its apportionment.

21. Service of notices.—The service of any notice under this Act shall be made in the manner prescribed.

22. Penalty for obstructing acquisition of land.—Whoever willfully obstructs any person in doing any of the acts authorised by section 3 or willfully fills up, destroys, damages or displaces any trench or mark made under section 3, shall on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to a fine not exceeding fifty rupees of to both.

23. Magistrate to enforce surrender.—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

24. Completion of acquisition not compulsory.—(1) The Government shall be at liberty to withdraw at any time from the acquisition of any land, before the award has been made under section 10.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damages, if any suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

25. Exemption from stamp duty and fees.—No award made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award shall be liable to pay any fee for a copy of the same.

26. Protection of action taken under the Act.—(1) No suit, prosecution or other legal prosecution shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

27. Poser to make rules.—(1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the determination of net annual income under clauses (b) and (c) of section 12;

(b) the decision of disputes under sub-section (2) of section 13 as to the apportionment of compensation;

(c) the manner of preferring appeals under section 15, and the authority to whom such appeals are to be preferred;

(d) the payment of compensation, referred to in section 18;

(e) the costs other than the costs of investment of the compensation money referred to in sub-sect (2) of section 19;

(f) the manner of service of notices under this Act.

THE HATS & BAZARS (ESTABLISHMENT & ACQUISITION) ORDINANCE, 1959

(East Pakistan Ordinance No. XIX of 1959)

[2nd march, 1959]

As on 30.6.1994

An ordinance to control the establishment of hats and bazars and acquire certain hats and bazar already established.

WHEREAS it is expedient to make provisions for controlling the establishment of hats and bazars in East Pakistan and for the acquisition of the hats and bazar established after the final publication of the compensation Assessment-roll under section 42 of the East Bengal State Acquisition and Tenancy Act, 1950 (E.B. Act XXVIII of 1951) ;

Now THEREFORE, in pursuance of the Presidential Proclamation of the 7th day of October, 1958 and in exercise of all powers, enabling him in that behalf, the Governor is pleased to make and promulgate the following Ordinance, namely :—

1. Short title, extent and commencement.—(1) This Ordinance may be called the Hats and Bazars (Establishment and Acquisition) Ordinance, 1959.

(2) It extends to the whole of Bangladesh

(3) It shall come into force at once.

2. Establishment of Hats and Bazars.—(1) No person shall establish any hat or bazar in Bangladesh.

(2) Nothing in sub-section (1) shall prevent the Government or any local authority from establishing any hat bazar;

Provided that prior approval of the Deputy Commissioner shall, in the case of a local authority, be necessary.

Explanation.—In sub section (2) "local authority" shall mean Local Councils as defined in sub-clause (24) of clause (1) of Article 3 of the Basic Democracies Order, 1959 (P.O. No. 18 of 1959), or any other authority legally entitled to, or entrusted by the Government with, the control or management of a local fund.

(3) Any hat or bazar established in contravention of the provisions of sub section (1) and (2) including the land on which such hat or bazar is established and all interests therein shall be forfeited to the Government.

Provided that where any hat or bazar has been so established on any land by a person or persons other than the owner of the land without the consent of such owner, the land shall not be forfeited, but it shall be lawful for the Deputy Commissioner,—

(i) to remove the hat or bazar from the land, by rising such force as may be necessary, or

(ii) to take over the land on behalf of the Government on payment to the owner the market value of the land immediately before the establishment of the hat or bazar to be determined in the manner prescribed by the rules, or

(iii) to issue a licence to the owner permitting him to continue the hat or bazar for such period and on payment of such fees and on such terms and conditions as may be prescribed by rules.

3. Power of the Government to acquire hats and bazars and determination of compensation.—(1) Notwithstanding anything contained in any other law for the time being in force, the Government may, by notification in the Official Gazette, acquire with effect from such date as may be specified in that notification, any hat or bazar established in any area after the final publication of the Compensation Assessment-roll under section 42 of the State Acquisition and Tenancy Act, 1950 (E.B. Act XXVIII of 1951), in respect of that area, on payment of compensation at the rate provided for in clause (b) of sub-section (1) of section 39 of the said Act.

(2) On and from the date specified in the notification under sub-section (1) in respect of any hat or bazar, such hat or bazar shall vest in the Government free from all encumbrances.

(3) The compensation payable under sub-section (1) shall be determined and paid to person or persons interested by the

Deputy Commissioner in such manner as may be prescribed by rules made under this Ordinance.

(4) An appeal against the order of the Deputy Commissioner under sub-section (3), if preferred within 30 days of the date of the order, shall lie to the Commissioner of the Division.

(4a) An order of the Commissioner passed under sub-section (4) and, subject only to such order, an order of the Deputy Commissioner passed under sub-section (3) shall be final.

4. Interpretation.—For the purpose of this Ordinance, the expression Deputy Commissioner shall include an Additional Deputy Commissioner and a Joint Deputy Commissioner and all other words and expressions used in this Ordinance and defined in the State Acquisition and Tenancy Act, 1950 (E.B. Act XXVIII of 1951), shall have meaning respectively assigned to them by that Act.

5. Rule-making power.—The Government may make rules for carrying out the purposes of this Ordinance.

INDEX